



## Review of equality data collection practices in Denmark

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*Published in:*

Analysis and comparative review of equality data collection practices in the European Union

*Publication date:*  
2017

*Document Version*  
Også kaldet Forlagets PDF

[Link to publication from Aalborg University](#)

*Citation for published version (APA):*

Bak Jørgensen, M., & Emerek, R. (2017). Review of equality data collection practices in Denmark. I *Analysis and comparative review of equality data collection practices in the European Union: Legal framework and practice in the EU Member States* (s. 47-53). European Commission.

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Analysis and comparative review of  
equality data collection practices in  
the European Union

# Legal framework and practice in the EU Member States

**EUROPEAN COMMISSION**

Directorate-General for Justice and Consumers  
Directorate D — Equality  
Unit JUST/D1

*European Commission  
B-1049 Brussels*

Analysis and comparative review of equality data collection  
practices in the European Union

# **Legal framework and practice in the EU Member States**

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Luxembourg: Publications Office of the European Union, 2017

ISBN 978-92-79-66080-1

doi:10.2838/6934

DS-02-17-200-EN-N

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## Introduction

The European Union is strongly committed to combating discrimination and to promoting equality. Measuring inequalities and designing social policies and remedies can however prove difficult if not impossible without relevant data. The collection of 'equality data' for such purposes generally depends upon the legal framework for the collection and processing of sensitive personal data as provided by the Data Protection Directive 95/46/EC and transposing legislation in the EU Member States.

The purpose of this mapping exercise is to provide the European Commission with analysis and relevant information on the national legal frameworks, policies and activities in the field of equality data collection in the EU Member States. The project covers the grounds of age, ethnic or racial origin, sexual orientation, gender identity, disability, religion or belief and multiple grounds. The working definition of 'equality data' is: 'data that is useful for the purposes of analysing the state of equality, in particular for analysing the extent and nature of discrimination and inequality'.<sup>1</sup> It includes all types of disaggregated data, meaning data that has been broken down by variables such as age or disability for the purposes of assessing the comparative situation of one or more groups at risk of discrimination. Equality data can be derived from different sources such as censuses, administrative registers, and surveys.

This report provides a concise country overview of the existing legal frameworks and practices in each of the EU Member States. It is completed by two separate reports focusing on equality data specifically on ethnicity and LGBTI.

The mapping exercise focuses on five main areas:

- the relevant legal frameworks for equality data collection,
- which equality data are collected by the national authorities,
- the frequency of equality data collection,
- definitions and categories used to collect equality data, and
- how the equality data collected is used.

## *Methodology*

The mapping exercise is based on national reports produced by country experts on equality data specifically selected for this purpose. The national reports cover all types of sources of data – quantitative as well as qualitative – that may be relevant for the purpose of measuring discrimination or inequalities, including official statistics, complaints data, and research/surveys on perceived or experienced discrimination. Clear and concise summaries of these country reports can be found within this report, providing the core information on which the rest of the mapping is based. The information is centred and structured around the five main focus areas, i.e. legal frameworks, equality data collected, frequency of equality data collection, definitions and categories and finally the use of the equality data collected.

Following the overview of the national legal frameworks and practices in the 28 EU Member States, the present report contains a concluding chapter which draws from the country specific information to demonstrate some general trends, patterns and tendencies across the EU within the five focus areas. Although the concluding chapter does not provide a full comparative analysis of the national legal frameworks and practices, it aims at presenting an interesting overview and highlighting some illustrative examples.

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<sup>1</sup> European Handbook on Equality Data, p. 13.

### *LGBTI and Ethnicity thematic reports*

In addition to the present mapping report, two separate reports have been produced on the basis of the information contained in the national reports, presenting and analysing the specificities of equality data collection with regards to, on the one hand, LGBTI people and, on the other, ethnic minorities. These two grounds present similarities in the sense that although there is a particular demand for such equality data, there are important complexities regarding data collection on these grounds. The two ground specific reports are authored by Lilla Farkas (senior ground expert for ethnic and racial origin) and Mark Bell (senior ground expert for sexual orientation and gender identity) respectively. The reports have been reviewed by the advisory board, to ensure that full consideration is given to the community perspectives on the collection of data on the grounds concerned.



## 1. Austria

**Expert: Katrin Wladasch**

### 1. Relevant legal framework

There is no specific legislation on the collection of equality data on the grounds of age, ethnic or racial origin, sexual orientation, gender identity, disability, religion or belief and/or multiple grounds. Specific obligations to collect equality data are included in the Federal Law on the Equal Treatment Commission and the Ombud for Equal Treatment (ETC/OET Law),<sup>2</sup> as well as in the Law on the employment of persons with disabilities (EPD Law).<sup>3</sup> According to Article 12 paras 6 and 7 of the ETC/OET Law the Equal Treatment Commission, a special body established within the Federal Ministry for Education and Women in charge of deciding discrimination complaints, has to publish its decision as well as relevant judgements in an anonymous form on the website of the Federal Chancellery. Moreover, Article 13 obliges employers to provide a comparative overview of employment conditions, carrier options, duration and ending of employment, etc. according to the discrimination grounds concerned. Article 16 of the EPD Law formulates an obligation for employers to maintain a register of the employment of registered disabled persons (*Begünstigte Behinderte*) in order to monitor the fulfilment of the positive obligation to employ one person with a disability for every 30 employees (without disabilities).<sup>4</sup>

The main legal source on the collection of data and its limitations in Austria is the Federal Act concerning the Protection of Personal Data.<sup>5</sup> Sensitive data according to Article 4 are defined as data relating to natural persons concerning their racial or ethnic origin, political opinions, trade-union membership, religious or philosophical convictions, and data concerning health or sex life, corresponding with Article 8.1 of the Data Protection Directive 95/46/EC.<sup>6</sup> It also refers to data relating to natural persons concerning their health, which can include data of relevance for disability. Reference to age is missing, as is an explicit reference to disability. This means that data on age can be collected as any other data without any specific protection.

Article 9 restricts the use of sensitive data as defined in Article 4 to cases where the person affected has agreed to it, data are processed in a way that they only indirectly refer to the person, the use results from an obligation to fulfil legal requirements in the general interest, data are processed in fulfilling the obligation on mutual assistance by public authorities, the data processed merely refer to the execution of a public function of the person, processing is necessary in order to protect the vital interests of the person affected or another person, the processing is necessary in order to take care of the legal interests of another person or organisation in interaction with a public authority, if the data are collected in a legal way, data are necessary for the purposes of healthcare, medical diagnostics, etc. or processing is carried out by non-profit associations with a political, philosophical, religious or trade-union aim within their legitimate interest only in

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<sup>2</sup> Austria, Federal Law on the Equal Treatment Commission and the Ombud for Equal Treatment (*Bundesgesetz über die Gleichbehandlungskommission und die Gleichbehandlungsanwaltschaft*), BGBl. Nr. 108/1979 idF BGBl. Nr. 577/1980, last amended BGBl. I Nr. 107/2013, [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008466](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008466)

<sup>3</sup> Austria, Law on the employment of persons with disabilities (*Behinderteneinstellungsgesetz*), BGBl. Nr. 22/1970, last amended BGBl. I Nr. 57/2015, [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008253](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008253).

<sup>4</sup> The so-called '*Pflichtzahl*'.

<sup>5</sup> Austria, Federal Act concerning the Protection of Personal Data (*Bundesgesetz über den Schutz personenbezogener Daten*), BGBl. I Nr. 165/1999, last amended by [BGBl. I Nr. 132/2015](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001597) (VfGH), [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001597](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001597).

<sup>6</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995L0046:en:HTML>.

relation to the data of their members, funders or other persons who have expressed a regular interest in the aim of the organisation.

The use of data is also allowed for employers to fulfil their legal obligations in the field of labour (see Article 16 of the EPD Law) obliging employers to maintain a register of the employment of registered disabled persons as well as for the purposes of scientific research and statistics (Article 46). The prohibition of data collection and processing as well as the exemptions are in line with Article 8 of the Data Protection Directive 95/46/EC.

Data collection must also be in line with the limitations imposed by the Federal Law on Statistics, which in Article 5 para 3 prohibits an order to collect personal data in relation to racial or ethnic origin, political opinion, trade-union membership, religious or philosophical beliefs, and data concerning health or sex life and states that the collection of such data has to be ordered by law or a legal act.<sup>7</sup>

| Consent <sup>8</sup> | Employment <sup>9</sup> | Health/life <sup>10</sup> | Public <sup>11</sup> | Members <sup>12</sup> | Legal claim <sup>13</sup> | Medicine <sup>14</sup> | Public interest – Other <sup>15</sup> |
|----------------------|-------------------------|---------------------------|----------------------|-----------------------|---------------------------|------------------------|---------------------------------------|
| X                    | X                       | X                         | X                    | X                     | X                         | X                      | X                                     |

## 2. Definitions and categories used to collect equality data

As there is no legislation which would regulate equality data collection in a coherent way there is also no coherent approach in relation to which categories and definitions should be applied for data collection. The Federal Act concerning the Protection of Personal Data<sup>16</sup> defines sensitive data as that relating to natural persons concerning their racial or ethnic origin, political opinion, trade-union membership, religious or philosophical convictions, and data concerning health or sex life. The ETC/OET Law,<sup>17</sup> when formulating the requirement to publish ECT decisions and relevant court judgements, refers to the characteristics protected by Austrian equal treatment legislation, namely

<sup>7</sup> Austria, Article 5 para 3 Federal Law on statistics (*Bundesgesetz über die Bundesstatistik*), BGBl. I Nr. 163/1999, last amended BGBl. I Nr. 40/2014, [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10006095](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10006095).

<sup>8</sup> Consent: sensitive data may be collected if the data subject has given his/her informed consent.

<sup>9</sup> Employment: sensitive data may be collected when it is necessary for an employer to fulfil his/her/its obligations by virtue of employment legislation.

<sup>10</sup> Health/life: sensitive data may be collected when it is necessary for the health of the data subject and it is impossible to obtain his/her consent.

<sup>11</sup> Public: sensitive data may be collected when the data subject has made the data public him/herself.

<sup>12</sup> Members: sensitive data may be collected by associations or organisations regarding their members.

<sup>13</sup> Legal claims: sensitive data may be collected when it is necessary to establish, exercise or defend legal claims before a court of law.

<sup>14</sup> Medicine: sensitive data may be collected when it is necessary for the purposes of preventive medicine, medical diagnosis, care/treatment or health management.

<sup>15</sup> Public interest/other: sensitive data may be collected in other situations, as provided for by law, when required for reasons of substantial public interest.

<sup>16</sup> Austria, Federal Act concerning the Protection of Personal Data (*Bundesgesetz über den Schutz personenbezogener Daten*), BGBl. I Nr. 165/1999, last amended by [BGBl. I Nr. 132/2015](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001597) (VfGH), [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001597](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001597).

<sup>17</sup> Austria, Federal Law on the Equal Treatment Commission and the Ombud for Equal Treatment (*Bundesgesetz über die Gleichbehandlungskommission und die Gleichbehandlungsanwaltschaft*), BGBl. Nr. 108/1979 idF BGBl. Nr. 577/1980, last amended BGBl. I Nr. 107/2013, [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008466](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008466).

gender (including gender identity), ethnic affiliation, sexual orientation, age, religion and belief as well as multiple discrimination.

Data on people with disabilities are partly collected according to the EU-SILC definition covering all those over 16 who themselves indicate during the survey that they have experienced a subjectively perceived limitation for a period of at least six months while carrying out their daily work, and partly based on the legal status of a person with a disability.<sup>18</sup>

Most data collected by the national statistical authority, Statistik Austria, are disaggregated according to age and gender (not including gender identity).<sup>19</sup>

Data on Austrian national minorities (Croats, Slovenes, Hungarians, Slovaks, Czechs and Roma) had been collected by the category of language until the last population Census in 2001. Since then data have only been available based on self-identification and are hence very vague. Data in relation to the ethnic affiliation or race of groups that are not recognised as national minorities are collected by the proxies of nationality and/or migration background.<sup>20</sup> Data on country of birth and migration background have been collected since 2008, before that, nationality was the only indicator available.

The national questionnaire of the European Social Survey (ESS) asks about a feeling of belonging to any religious community.<sup>21</sup>

### 3. Practical implementation

The national statistical authority, Statistik Austria, is in charge of collecting data for Federal statistics as determined by the Federal Law on Statistics.<sup>22</sup> This includes the provision of data on the economic, demographic, social, ecological and cultural circumstances in Austria to the Federal bodies for their planning, preparation of decisions and monitoring of measurements as well as to academia, the business world and the general population. Data collected on a quarterly basis by the so-called Microcensus survey of a sample of 20,000 Austrian households feed into the Labour Force Survey (LFS), whilst a yearly survey with a sample of 6,000 households is conducted in order to provide data for the Statistics on Income and Living Conditions (EU-SILC). Data are disaggregated according to gender, age and nationality or migration background. Specific data are also collected on the situation of persons with disabilities and have twice been published in the form of a report of the federal government on the situation of people with disabilities in Austria.<sup>23</sup> Data for the European Social Survey (ESS) are collected by experts from the Institute of Higher Studies (IHS) based on the ESS

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<sup>18</sup> According to Article 2 of the Law on the employment of persons with disabilities (*Behinderteneinstellungsgesetz*), BGBl. Nr. 22/1970, last amended BGBl. I Nr. 57/2015, people with disabilities with a degree of disability determined at 50% can apply for the status of a so-called '*Begünstigt Behinderte*' and be registered as such with the Federal Social Services. This status entitles the individual to special support and rights.

<sup>19</sup> See: [www.statistik.at/web\\_de/statistiken/menschen\\_und\\_gesellschaft/bevoelkerung/bevoelkerungsstruktur/bevoelkerung\\_nach\\_alter\\_geschlecht/index.html](http://www.statistik.at/web_de/statistiken/menschen_und_gesellschaft/bevoelkerung/bevoelkerungsstruktur/bevoelkerung_nach_alter_geschlecht/index.html).

<sup>20</sup> See: [www.statistik.at/web\\_de/statistiken/menschen\\_und\\_gesellschaft/bevoelkerung/bevoelkerungsstruktur/bevoelkerung\\_nach\\_migrationshintergrund/index.html](http://www.statistik.at/web_de/statistiken/menschen_und_gesellschaft/bevoelkerung/bevoelkerungsstruktur/bevoelkerung_nach_migrationshintergrund/index.html).

<sup>21</sup> See, for example, the national questionnaire for the 7<sup>th</sup> round of the ESS: [www.europeansocialsurvey.org/docs/round7/fieldwork/austria/ESS7\\_questionnaires\\_AT.pdf](http://www.europeansocialsurvey.org/docs/round7/fieldwork/austria/ESS7_questionnaires_AT.pdf).

<sup>22</sup> Austria, Federal Law on statistics (*Bundesgesetz über die Bundesstatistik*), BGBl. I Nr. 163/1999, last amended BGBl. I Nr. 40/2014.

<sup>23</sup> Bundesministerium für Arbeit, Soziales und Konsumentenschutz (2008), *Behindertenbericht 2008* [Report on Persons with Disabilities 2008], available at: [www.sozialministerium.at/cms/site/attachments/0/5/9/CH3141/CMS1415978600199/behindertenbericht\\_2008.pdf](http://www.sozialministerium.at/cms/site/attachments/0/5/9/CH3141/CMS1415978600199/behindertenbericht_2008.pdf).

questionnaires and supplemented by country-specific questions that, for example, also refer to religion, political affiliation and ethnic minority status.<sup>24</sup>

Data on hate crime cases are collected by the Office for the Protection of the Constitution (*Verfassungsschutz*).<sup>25</sup> Data are broken down by the motivation, be it racist/xenophobic, anti-Semitic, Islamophobic or right-wing extremist. The Equal Treatment Commission (ETC) in charge of deciding on discrimination on grounds of gender, gender identity, ethnic affiliation, religion and belief, sexual orientation and age, as well as in cases of multiple discrimination, collects and publishes data on its own decisions as well as on relevant court judgements on the website of the Federal Ministry for Education and Women.<sup>26</sup> The Austrian Disability Ombudsman provides an overview on its website of those settlements which are reached in cases of discrimination on the ground of disability, where the Ombudsman was involved on the side of the person affected by discrimination.<sup>27</sup> However, neither the ETC nor the Disability Ombudsman provide for any statistical data or assessment of the cases presented.

There is no coherent equality data collection carried out by NGOs. The Litigation Association of NGOs Against Discrimination provides information on decisions in discrimination cases by the courts and the Equal Treatment Commission, as well as results of settlement procedures in cases on grounds of disability broken down by ground of discrimination and by field.<sup>28</sup> The NGO ZARA (*Zivilcourage und Anti-Rassismus-Arbeit*) has been providing information about racist incidents in its annual reports since 1999. However, the information is limited to cases brought to the attention of ZARA and aims to provide a picture of the quality of racist discrimination in Austria rather than a quantitative picture.<sup>29</sup> The association BIZEPS, centre for independent living, provides an overview of all settlements reached in disability discrimination cases. This is important insofar as there is no obligation to make them public as is the case for decisions made by the Equal Treatment Commission.<sup>30</sup>

Data disaggregated according to nationality and migration background in the fields of education, the labour market, housing, social inclusion, health, political participation, etc. form the basis for identifying fields for action in relation to the “integration” of migrants. Following a national action plan for integration<sup>31</sup> developed by the Federal Ministry for European and International Affairs, a set of measures are implemented in order to improve the situation of migrants in all the fields tackled. Progress is monitored by an expert council for integration<sup>32</sup> based *inter alia* on data provided by Statistik Austria and published in the form of a statistical yearbook on migration and integration.<sup>33</sup>

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<sup>24</sup> See, for example, the national questionnaire for the 7<sup>th</sup> round of the ESS:

[www.europeansocialsurvey.org/docs/round7/fieldwork/austria/ESS7\\_questionnaires\\_AT.pdf](http://www.europeansocialsurvey.org/docs/round7/fieldwork/austria/ESS7_questionnaires_AT.pdf).

<sup>25</sup> Bundesministerium für Inneres (2015), *Verfassungsschutzbericht 2014* [Report on protection of the constitution 2014], available at:

[www.bmi.gv.at/cms/BMI\\_Verfassungsschutz/Verfassungsschutzbericht\\_Jahr\\_2014.pdf](http://www.bmi.gv.at/cms/BMI_Verfassungsschutz/Verfassungsschutzbericht_Jahr_2014.pdf).

<sup>26</sup> [www.bmbf.gv.at/frauen/gleichbehandlungskommissionen/gleichbehandlungskommission/anonymisierteentscheidungen.html](http://www.bmbf.gv.at/frauen/gleichbehandlungskommissionen/gleichbehandlungskommission/anonymisierteentscheidungen.html).

<sup>27</sup> See: [www.behindertenanwalt.gv.at/schlichtungen/](http://www.behindertenanwalt.gv.at/schlichtungen/).

<sup>28</sup> See: [www.klagsverband.at/faelle](http://www.klagsverband.at/faelle).

<sup>29</sup> See: [www.zara.or.at/index.php/beratung/rassismus-report](http://www.zara.or.at/index.php/beratung/rassismus-report).

<sup>30</sup> See: [www.bizeps.or.at/gleichstellung/schlichtungen/](http://www.bizeps.or.at/gleichstellung/schlichtungen/).

<sup>31</sup> Bundesministerium für Europa, Integration und Äußeres, *Nationaler Aktionsplan Integration* [National Action Plan for Integration], available at:

[www.bmeia.gv.at/fileadmin/user\\_upload/Zentrale/Integration/NAP/Bericht\\_zum\\_Nationalen\\_Aktionsplan.pdf](http://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Integration/NAP/Bericht_zum_Nationalen_Aktionsplan.pdf)

<sup>32</sup> Foreign Ministry for Europe, Integration and Foreign Affairs (2015), *Integration Report. Achievements to date and guiding principles for the future*. Available at:

[www.bmeia.gv.at/fileadmin/user\\_upload/Zentrale/Integration/Integrationsbericht\\_2015/Integrationreport\\_2015\\_EN.pdf](http://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Integration/Integrationsbericht_2015/Integrationreport_2015_EN.pdf).

<sup>33</sup> Statistik Austria (/2015), *Migration & integration. Zahlen, daten und indikatoren 2015* [Migration & integration. Figures, data and indicators 2015], available at:

The City of Vienna implemented a so-called Integration and Diversity Monitor in 2008 in order to assess and analyse the composition of the city's population and to develop measures to foster integration and equality of opportunities. The integration monitoring unit aims to identify the relevance of migration (either by people directly or by their parents) in relation to their social position, participation in education, professional mobility, risk of being affected by unemployment, health, and selection of housing, as well as social and political participation. The findings are taken into account when evaluating the City's activities in all these areas.<sup>34</sup>

Following a call for proposals by the Federal Ministry of Labour, Social Affairs and Consumer Protection, the Institute of Higher Studies (IHS) conducted research on discrimination against migrants on the Austrian labour market.<sup>35</sup> The aim of the study was to identify the volume of discrimination which exists in access to employment as well as in relation to pay. In order to achieve this aim, two methods of data collection were applied. Differences between Austrians and migrants in terms of pay were analysed, based on data from the Microcensus and the labour market database, taking into consideration differences on grounds of different types of work and such with a mere discriminatory component. At the same time, a correspondence testing experiment was conducted in order to test the recruiting habits of Austrian business in some key sectors.

The first study of the situation of LGBTI people in Vienna was conducted by the IHS, contracted by the City of Vienna and its contact point for anti-discrimination (*Wiener Anti-Diskriminierungsstelle*). The study aimed to analyse the situation of LGBTI people in Vienna and to identify areas for further action.<sup>36</sup>

The IHS has also undertaken research into experiences of discrimination by Austrian students on behalf of the Austrian National Union of Students. The aim of the research was to identify the level and type of discrimination Austrian students are affected by. For the purpose of the survey, discrimination was defined as unequal treatment on grounds of ethnic, cultural or religious affiliation, sexual orientation/identity, age, disability, language, nationality, skin colour and gender and data on experiences of discrimination were also disaggregated according to these grounds.<sup>37</sup>

#### 4. Key issues

Equality data are not collected in a coherent and systematic way in Austria. Most data collected by the national statistical office are disaggregated according to gender and age, which can be taken as a reliable source of information and a basis for policy action planning. This is not the case for other grounds. Data on the situation of people according to their racial and ethnic origin can only be identified by using the proxies of nationality or migration background. This is also valid for data collected for the EU LFS. The only survey which also asks about religious affiliation and ethnic minority status is the national part of the ESS.

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[www.integrationsfonds.at/fileadmin/content/AT/Downloads/Publikationen/Statistisches\\_Jahrbuch\\_migration\\_integration\\_2015.pdf](http://www.integrationsfonds.at/fileadmin/content/AT/Downloads/Publikationen/Statistisches_Jahrbuch_migration_integration_2015.pdf).

<sup>34</sup> Stadt Wien–MA 17 (2014), 3. *Wiener Integrations & Diversitätsmonitor* [3rd Vienna Monitor on Integration and Diversity], available at: [www.wien.gv.at/menschen/integration/pdf/monitor-2014.pdf](http://www.wien.gv.at/menschen/integration/pdf/monitor-2014.pdf).

<sup>35</sup> Hofer, H., Titelbach, G., Weichselbaumer, D., Winter-Ebmer, R. (2013), *Diskriminierung von MigrantInnen am österreichischen Arbeitsmarkt* [Discrimination of migrants on the Austrian labour market], Institut für Höhere Studien Vienna, available at: [www.sozialministerium.at/cms/site/attachments/0/0/9/CH2247/CMS1318326022365/diskriminierung\\_migrantinnen\\_arbeitsmarkt.pdf](http://www.sozialministerium.at/cms/site/attachments/0/0/9/CH2247/CMS1318326022365/diskriminierung_migrantinnen_arbeitsmarkt.pdf).

<sup>36</sup> Institut für Höhere Studien (2015), *Queer in Wien* [Queer in Vienna], available at: [www.wien.gv.at/menschen/queer/pdf/wast-studie-ergebnisse.pdf](http://www.wien.gv.at/menschen/queer/pdf/wast-studie-ergebnisse.pdf).

<sup>37</sup> Institut für Höhere Studien (2015), *Projektbericht: Diskriminierungserfahrungen von Studierenden* [Research report: Experiences of discrimination by students], Vienna, available at: [http://uniko.ac.at/modules/download.php?key=8432\\_DE\\_O&cs=0E95](http://uniko.ac.at/modules/download.php?key=8432_DE_O&cs=0E95).

Data collection about people with disabilities and their situation is not undertaken in a systematic way. Data collected by Statistik Austria, for instance about the income and living conditions of the Austrian population (EU-SILC), are limited to people between the ages of 16 and 24 who live in households. Children under the age of 16, elderly people and people with disabilities who live in institutions are not recorded. Moreover, different definitions of who is considered to be a person with disabilities constitute another barrier to obtaining a complete and comprehensive picture of all people with disabilities living in Austria. This deficiency also impedes the development and implementation of adequate strategies to meet the needs of all people with disabilities. Data on sexual orientation are not collected at all, nor are data on gender identity or multiple grounds.

The lack of coherent, systematic and relevant equality data constitutes a barrier to addressing structural discrimination patterns and developing and implementing effective policy action.

## 2. Belgium

**Experts: Hannah Vermaut and Louise Callier**

### 1. Relevant legal framework

In Belgium, there is no specific legislation on the collection of equality data and no legislation obliging equality data to be collected on age, ethnic or racial origin, sexual orientation, gender identity, disability and religion or belief.

The most relevant legal provision for equality data collection is the Law on the protection of privacy with regard to the processing of personal data.<sup>38</sup> This law regulates the collection and processing of personal data - with regard to any information concerning an identified or identifiable natural person - which is only permitted if the purpose is specified, explicit and legitimate.<sup>39</sup> This law further prohibits the collection and processing of sensitive data in conformity with Article 8.1 of Directive 95/46/EC. It also sets out all the exemptions which allow the collection of such data. The exemptions in Article 8.2 to 8.4 of Directive 95/46/EC apply and are no wider than what is included in the Directive. The protected grounds considered as sensitive data include: racial or ethnic origin, political opinion, religious or philosophical beliefs, union membership, and data concerning sexual life and health.<sup>40</sup> However, exceptions do apply.<sup>41</sup>

| Consent | Employment | Health/life | Public | Members | Legal claim | Medicine | Public interest – Other |
|---------|------------|-------------|--------|---------|-------------|----------|-------------------------|
| X       | X          | X           | X      |         | X           | X        | X                       |

The Commission for the Protection of Privacy, through its sectoral committees, is entitled to give permission for the collection and processing of sensitive data. An authorisation request must be first made to the Commission for the Protection of Privacy. The Commission then entrusts the processing to a sectoral committee. The request contains an explanation of why it is essential to have access to data, who should be granted to access to them and for how long. The reason for authorisation or refusal is included in the decision. All decisions are published on the website of the Commission for the

<sup>38</sup> Belgium, Law on the protection of privacy with regard to the processing of personal data (*Wet tot bescherming van de persoonlijke levenssfeer ten opzichte van de verwerking van persoonsgegevens*), Belgian official journal, 18 March 1993.

<sup>39</sup> Art. 1§1 and Art. 4§1, Law on the protection of privacy with regard to the processing of personal data.

<sup>40</sup> Art. 6 and Art. 7, Law on the protection of privacy with regard to the processing of personal data.

<sup>41</sup> Exceptions: the person concerned has given their written consent to such processing, provided that they may withdraw such consent at any time; processing is necessary to implement the obligations and specific rights of the party responsible for data processing in the field of labour law; the processing is necessary to protect the vital interests of the data subject or of another person where the data subject is physically or legally incapable of giving their consent; the processing relates to data which are manifestly made public by the data subject; the processing is necessary for the realisation of a goal set by or pursuant to law, for the purposes of social security; processing is necessary for the purposes of preventive medicine, medical diagnosis, the provision of care or treatment to the data subject or a relative, or health service management acting in the interest of the person concerned and the processing is performed under the supervision of a healthcare professional; the processing is necessary for the establishment, exercise or defence of legal claims. Specifically, for health: the processing is mandated by or under any law, decree or order for important reasons of public interest. Specifically, for racial or ethnic origin, political opinion, religious or philosophical beliefs, union membership, and data concerning sexual life: the processing of personal data such as sensitive data is provided by law, decree or order for important reasons of public interest.

Protection of Privacy. Once authorisation is given, the data processing must also be declared to the Commission for the Protection of Privacy using a declaration procedure. The Law on the protection of privacy with regard to the processing of personal data designates the Commission for the Protection of Privacy as the independent supervisory body that ensures personal data are used carefully and protected to maintain citizens' privacy. Besides legislative material, the Commission for the Protection of Privacy delivers opinions, authorisations and recommendations on the use of personal data.

Before implementing a fully or partially automated process (e.g. before starting to collect personal data), any party responsible for data processing must disclose the process in a declaration to the Commission for the Protection of Privacy. This declaration includes information about the purpose of the processing, the data categories, guarantees about the communication of the data and the period for which the data will be retained. All information submitted in the declaration is included in a public register. This register can be freely accessed by anyone.

No specific guidance concerning how to use equality data exists in Belgium. However, the website of the Commission for the Protection of Privacy contains information on what can or cannot be done pertaining to personal data and gives instructions about how to request data from the National Register and the necessary guarantees that must be given for the proper use of these data. The request procedure to the Crossroads Bank for Social Security (beside the National Register, the biggest provider of administrative data in Belgium) is also formalised on their website, including the guarantees that must be given to ensure the proper use of the data.

Although there is no legislation requiring the collection of equality data on age, ethnic or racial origin, sexual orientation, gender identity, disability and religion or belief, subsidies for public institutions are conditional on the employment of a specific percentage of people from a certain age category or with a disability, which renders the collection and reporting of data on age and disability necessary, if an institution wishes to be eligible for these subsidies. The integration funds for people with disabilities can also apply sanctions by not granting financial support for reasonable accommodations at work.

## **2. Definitions and categories used to collect equality data**

The Law on the protection of privacy with regard to the processing of personal data explicitly prohibits the collection and processing of sensitive data, which includes (amongst others) data on racial or ethnic origin, religious or philosophical beliefs, as well as the processing of data concerning sex life (which includes data on sexual orientation) and health-related personal data (which includes data on disability). This law, however, does not define racial or ethnic origin, religious or philosophical beliefs, sexual orientation and disability. The anti-discrimination legislation in Belgium (federal law, decrees and orders), protecting 19 grounds, does not provide any definitions of the protected grounds either.<sup>42</sup>

Concerning racial or ethnic origin, there are five protected grounds mentioned in the anti-discrimination legislation, i.e. presumed race,<sup>43</sup> skin colour, nationality, ancestry (referring to Jewish origin) and national or ethnic origin. These grounds are not defined. Categories used to collect equality data on racial and ethnic origin are often based on the

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<sup>42</sup> Belgium, Law combating certain kinds of discrimination (*Wet ter bestrijding van bepaalde vormen van discriminatie*), Belgian official journal, 30 May 2007.

<sup>43</sup> The Belgian legislator refers to 'presumed race' in the anti-racism and anti-discrimination legislation as it deemed it to be sufficiently proven by scientific studies that humankind cannot be divided by race. See: Vrieling, J. (2010), *Van haat gesproken?: een rechtsantropologisch onderzoek naar de bestrijding van rasgerelateerde uitingsdelicten in België* [Talking about hate?: a legal and anthropological study of the combating of race-related crimes of expression in Belgium], Antwerp: Maklu.



past, most significant migration flows into Belgium from ethnic minority groups such as Turkish, Moroccan and Congolese migrants, or on more recent migration flows from ethnic minority groups such as Eastern European migrants. Categories sometimes also make a distinction between EU migrants and non-EU migrants. Equality data on labour market participation by ethnic minorities based on administrative data also include categories differentiating between first and second generation migrants (also distinguishing between those who have acquired Belgian nationality and those who have not).<sup>44 45</sup>

Sexual orientation is also not defined in Belgian law. Categories used to collect equality data on sexual orientation include homosexual, lesbian, heterosexual, bisexual and other. In addition, scales are sometimes used allowing people to choose categories in between (for example, 'more homosexual than heterosexual').<sup>46</sup>

No definition of gender identity can be found in Belgian law. Discrimination based on gender identity as well as discrimination based on sex change is equivalent to discrimination based on sex; they both fall under the Law combating discrimination between men and women, also known as the Gender Law.<sup>47</sup> To collect data on gender identity, scales are used allowing people to indicate to what extent they identify as a woman, man or in between. Increasingly, surveys ask the sex of a person using the open-ended multiple choice question 'man', 'woman', 'other: ...', the latter category allowing for transgender, transgenderist, transsexual, transvestite, intersex or other people to self-identify.

Disability is also not defined in Belgian law. Belgium has ratified the UNCPRD, the preamble of which talks about, 'recognising that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others'.<sup>48</sup> Categories used to collect equality data on disability include physical or mental disability and chronic illness; however, they hardly take into account the attitudinal and environmental barriers as mentioned in the UNCPRD.

Religion and belief are not defined in Belgian Law. Freedom of religion and freedom of worship and religious practice are part of the Belgian Constitution.

Age is also not defined in Belgian Law. Categories used to collect equality data on age largely depend on the source (based on age, age groups or year of birth).

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<sup>44</sup> See: FPS Employment, Labour and Social Dialogue & Centre for Equal Opportunities and Opposition to Racism (2013), *Socio-economische Monitoring* [Socioeconomic Monitoring]; FPS Employment, Labour and Social Dialogue & Interfederal Centre for Equal Opportunities (2015), *Socio-economische Monitoring. Arbeidsmarkt en origine* [Socioeconomic Monitoring. Labour market and origin].

<sup>45</sup> See: Djait, F. (2015), *Herkomstmonitor 2015. Arbeidsmarktpositie van personen met een buitenlandse herkomst op basis van administratieve gegevens* [Origin Monitor 2015. Labour market position of people of foreign origin based on administrative data], Brussels: Flemish Department of Work and Social Economy.

<sup>46</sup> See for example: Versmissen, D. (2011). *Zzzip<sup>2</sup>. Onderzoek naar de levenskwaliteit van Vlaamse holebi's* [Zzzip<sup>2</sup>. Research on the quality of life of LGB people in Flanders]. Antwerp: Policy Research Centre on Equal Opportunities. Available (in Flemish) at <http://www.steunpuntgelijkekansen.be/wp-content/uploads/II.35-Zzzipbis.pdf>; and D'haese, L., Dewaele, A., & Van Houtte, M. (2014). *Geweld tegenover holebi's – II. Een online survey over ervaringen met holebigeweld in Vlaanderen en de nasleep ervan* [Violence against LGB people – II. Online survey on the experiences of violence against LGB people in Flanders and its aftermath]. Antwerp: Policy Research Centre on Equal Opportunities. Available (in Flemish) at: <http://www.steunpuntgelijkekansen.be/wp-content/uploads/Geweld-tegenover-Holebis-II-tussentiidsrapport-2014-Lies-dHaese-130514-bvl.pdf>.

<sup>47</sup> Belgium, Law combating discrimination between men and women (*Wet ter bestrijding van discriminatie tussen vrouwen en mannen*), Belgian official journal, 30 May 2007.

<sup>48</sup> UN General Assembly, Convention on the Rights of Persons with Disabilities: resolution / adopted by the General Assembly, 24 January 2007, A/RES/61/106, available at: [www.refworld.org/docid/45f973632.html](http://www.refworld.org/docid/45f973632.html), accessed March 2016.

No definition of multiple grounds can be found in Belgian law.

### 3. Practical implementation

Some equality data stem from European surveys in which Belgium is a participating Member State. They are administered by Statistics Belgium, Belgium's national statistical office.

For the Labour Force Survey, quarterly and annually, data are collected on labour market participation by age and nationality and (for people of foreign nationality) by length of residency and country of birth.<sup>49</sup> For the EU-SILC survey, data are collected annually on the income and living conditions of a representative sample of Belgians. The survey provides information on age, place of birth, nationality, year of immigration and disability.<sup>50</sup> The Generations and Gender Survey (GGS) is a panel survey (every three years) of a representative sample of the population aged between 18 and 79. The GGS collects detailed information on social demographic themes, including information about sex, age, birthplace, mother's birthplace, nationality, nationality at birth, naturalisation, health status of respondent, chronic sickness and duration if applicable, limitations in daily activities due to health problems and duration of these limitations, (permanent) leave due to health reason (also for partner), and religious participation and belief.<sup>51</sup> The Health Interview Survey was developed by the Scientific Institute of Public Health (IPH) to collect information on the health of the general population, their medical consumption, lifestyle and on some socio-economic parameters. A number of questions pertain to disability.<sup>52</sup> For the European Social Survey (ESS) data are collected biannually from a representative sample of Belgians aged 15 and over on attitudes, beliefs and behaviours pertaining to (among other things) politics, migration and discrimination, well-being and health. Data are collected on age, nationality, ethnicity, religion (as well as religious practice) and health status (physical and mental health status, limitations in daily activities and use of health services).<sup>53</sup>

Some equality data are collected at the level of the Belgian federal state. They are administered by different federal institutions.

For the Socioeconomic Monitoring programme, administrative data from the National Register and the Crossroads Bank for Social Security are cross-referenced to map the labour market participation of all people of working age registered in the National Register according to ethnic origin and migration background. The data are gathered biannually by Belgium's equality body, the Interfederal Centre for Equal Opportunities, and the FPS (Federal Public Service) Employment, Labour and Social Dialogue, and data collection is supported by the Federal Minister of Employment.<sup>54</sup>

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<sup>49</sup> Statistics Belgium (2013), 'Enquête sur les forces de travail (EFT)/ 'Enquête naar de Arbeidskrachten (EAK)' [Labour Force Survey (LFS)], retrieved in March 2016 from: [http://statbel.fgov.be/fr/statistiques/collecte\\_donnees/enquetes/eft/](http://statbel.fgov.be/fr/statistiques/collecte_donnees/enquetes/eft/).

<sup>50</sup> Statistics Belgium (2013), 'Enquête sur les revenus et les conditions de vie (SILC)' ('Enquête naar de inkomens en levensomstandigheden (SILC)' ['EU statistics on income and living conditions], retrieved in March 2016 from: [http://statbel.fgov.be/fr/statistiques/collecte\\_donnees/enquetes/silc/](http://statbel.fgov.be/fr/statistiques/collecte_donnees/enquetes/silc/).

<sup>51</sup> Statistics Belgium (2016), 'L'enquête GGS Belgium' / 'Enquête GGS Belgium' [The GGS survey in Belgium], retrieved in March 2016 from: [http://www.ggps.be/survey\\_fr.htm](http://www.ggps.be/survey_fr.htm).

<sup>52</sup> L'Institut Scientifique de Santé Publique (2016), 'Enquête de Santé 2013 !' / Wetenschappelijk Instituut Volksgezondheid (2016), 'Gezondheidsenquête 2013!' [(Health Interview Survey 2013!)], retrieved in March 2016 from: <https://his.wiv-isp.be/fr/SitePages/Accueil.aspx>.

<sup>53</sup> ESS-ERIC (2016), 'L'ESS en Belgique' [The ESS in Belgium], retrieved in April 2016 from: [http://www.europeansocialsurvey.org/about/country/belgium/french/ess\\_belgium.html](http://www.europeansocialsurvey.org/about/country/belgium/french/ess_belgium.html).

<sup>54</sup> FPS Employment, Labour and Social Dialogue & Centre for Equal Opportunities and Opposition to Racism (2013), *Socio-economische Monitoring* [Socioeconomic Monitoring]; FPS Employment, Labour and Social Dialogue & Interfederal Centre for Equal Opportunities (2015), *Socio-economische Monitoring. Arbeidsmarkt en origine* [Socioeconomic Monitoring. Labour market and origin].

For the Diversity Barometers, both quantitative and qualitative data are collected biannually on discrimination, attitudes and participation related to different equality grounds in the labour market,<sup>55</sup> in housing<sup>56</sup> and in education. Depending on the area of research, equality grounds include ethnicity, nationality, age, disability, religion and sexual orientation. Commissioned by the Interfederal Centre for Equal Opportunities, universities and research institutes collect and analyse the data.

The Interfederal Centre for Equal Opportunities collects and publishes data on the number of notifications and the extrajudicial and judicial cases of discrimination on the basis of (among others) racial criteria (including nationality, alleged race, colour, descent and national or ethnic origin), disability, religion or belief, sexual orientation and age.<sup>57</sup>

The National Census includes data on gender, age, country/place of birth, nationality, same-sex marriage or legal cohabitation, which can be cross-referenced with data on housing, socio-economic data (situation on the labour market), financial information and many others through the inclusion of other administrative and survey-based databases.<sup>58</sup> The Census is conducted by Statistics Belgium and responds to the European regulation 763/2008.<sup>59</sup>

The database of the IMA-AIM, bringing together data from the seven health insurance funds in Belgium, includes data on the administrative status of disability or chronic sickness (this only includes people who are registered as having a disability/being chronically sick by the DG Handicap following a request).<sup>60</sup> The Handilab survey, commissioned by the Federal Government using academic researchers, is a survey on the socio-economic position of people with disabilities and provides an analysis of the effectiveness of allowances paid to them.<sup>61</sup>

Some equality data are also collected at the level of the Regions and Communities in Belgium. They are administered by the different authorities of the Regions and Communities.

The databases of the education authority, in both the French Community and the Flemish Community, gather data on pupils. In the Flemish community, the data warehouse of the Ministry of Education and Training includes (among other data) data on age, nationality, language spoken at home (used as a proxy for ethnicity) and type of disability (for special education).<sup>62</sup> In the French Community, the database offers data on pupils' age, type of disability (for special education), nationality and socio-economic level.<sup>63</sup>

<sup>55</sup> Centre for Equal Opportunities and Opposition to Racism (2012), *Diversiteitsbarometer Werk* [Diversity Barometer Employment].

<sup>56</sup> Interfederal Centre for Equal Opportunities (2014), *Diversiteitsbarometer Huisvesting* [Diversity Barometer Housing].

<sup>57</sup> See, for example: Interfederal Centre for Equal Opportunities (2015). *Jaarverslag 2014* [Annual report 2014].

<sup>58</sup> Statistics Belgium (2014), 'A propos du census. Census 2011: un recensement sans charge pour le citoyen' / 'Over de census. Census 2011: een volkstelling zonder last voor de burger' [About the census. Census 2011: a survey without workload for the citizens], retrieved in March 2016 from: [http://census2011.fgov.be/info/info\\_fr.html](http://census2011.fgov.be/info/info_fr.html).

<sup>59</sup> Regulation (EC) No 763/2008 of the European Parliament and of the Council of 9 July 2008 on population and housing censuses.

<sup>60</sup> IMA-AIM (2016), 'Description générale des données de l'Agence InterMutualiste (AIM)' / 'Inleiding: de data van het Inter Mutualistisch Agentschap (IMA)' (general description of the data from the IMA-AIM), retrieved in March 2016 from <http://www.nic-ima.be/Description-generale-des-donnees?lang=fr>.

<sup>61</sup> Vermeulen, B., Van Der Niet, M., Demaerschalk, E., Van Audenhove, C., and Hermans, K. (2012), *Handilab. Effectiviteit van de inkomensvervangende en integratietegemoetkomingen* [Handilab. Efficiency of income replacement allowances and inclusion allowances], Leuven: LUCAS – KULeuven.

<sup>62</sup> Flemish Ministry for Education and Training (2016), 'Onderwijsstatistieken' [Education Statistics], retrieved in March 2016 from <http://onderwijs.vlaanderen.be/onderwijsstatistieken>.

<sup>63</sup> See, for example: French Community (2014), 'Indicateurs de l'enseignement 2014' [Education system indicators].

In the Flemish Community, equality data are collected for various purposes on people of foreign origin. The Origin Monitor collects data in the Flemish Community on the demographics and labour market participation (employment status, salaried and self-employment, employment by occupational sector) of people of foreign origin.<sup>64</sup> Through the Local Citizenship and Integration Monitor data are collected annually for each Flemish municipality on the numbers of foreign nationals and people of foreign origin, by age and gender and cross-referenced with indicators pertaining to education, labour market participation and socio-economic status.<sup>65</sup> Through the Flemish Migration and Integration Monitor data are collected biannually, and cross-referenced with several other data sources on the number of foreigners attending integration courses in the Flemish Community, and on demographics, discrimination, labour market participation, education, housing, income and poverty, health and participation in society by people of foreign origin.<sup>66</sup>

In the Flemish Regional Indicators survey ('VRIND survey'), data are collected annually in the Flemish Community on the social position of LGB people, people with disabilities, people over the age of 55 and foreign nationals and people of foreign origin.<sup>67</sup>

In its *Annual Report – the French Community in figures* (a collection of data based on a range of administrative data), the French Community publishes the percentage of young people of foreign origin (EU/non-EU), the percentage of young people of foreign nationality (EU/non-EU) in higher education and the percentage of young people by employment status broken down by origin (EU/non EU, second generation) in the French Community.<sup>68</sup> In its annual *Activity report*, the French Community of Belgium reports on the complaints lodged with them annually, broken down by sex, including the category, "Trans".<sup>69</sup>

The Walloon Institute for Evaluation, Prospective and Statistics (*Institut wallon de l'évaluation, de la prospective et de la statistique - IWEPS*) uses data produced by other institutions to transmit and create indicators pertaining to age, origin/nationality and health. Two databases available to the public provide equality data derived from administrative databases and the 2001 census, by age, nationality, origin and subjective health status. The IWEPS also produces a series of indicators on disability using data from the Health Interview Survey.<sup>70</sup>

Each year the different agencies providing support for people with disabilities (the Agency for Quality of Life in the French Community, the Service for People with Disabilities in the German-speaking Community and the Agency for Disabled Persons in the Flemish Community) publish (among others) data on the number of people who are entitled by these agencies to receive support.<sup>71</sup>

<sup>64</sup> Djait, F. (2015), *Herkomstmonitor 2015. Arbeidsmarktpositie van personen met een buitenlandse herkomst op basis van administratieve gegevens* [Origin Monitor 2015. Labour market position of persons with a foreign origin based on administrative data], Brussels: Flemish Department of Work and Social Economy.

<sup>65</sup> Research Department of the Flemish Government (2015), 'Lokale Inburgerings- en Integratiemonitor' [Local Citizenship and Integration Monitor], retrieved in March 2016 from: <http://www4dar.vlaanderen.be/sites/svr/Monitoring/Pages/integratiemonitor.aspx>.

<sup>66</sup> Van den Broucke, S., Wets, J., Noppe, J., Stuyck, K., Buysschaert, P., & Doyen, G. (2015), *Vlaamse Migratie- en Integratiemonitor* [Flemish Migration & Integration Monitor], Brussels: Steunpunt Inburgering en Integratie & Agentschap Binnenlands Bestuur.

<sup>67</sup> Research Department of the Flemish Government (2016), 'VRIND', retrieved in March 2016 from: <http://www4dar.vlaanderen.be/sites/svr/Monitoring/Pages/2008-06-vrind.aspx>.

<sup>68</sup> French Community (2015), *La Fédération Wallonie-Bruxelles en chiffres* [Annual Report - the French Community in figures].

<sup>69</sup> Ministry of Equal Opportunities for the French Community (2015), *Rapport d'activité 2015* [Activity report 2015].

<sup>70</sup> IWEPS (2011), 'Accueil Statistiques' [Home Statistics]. Retrieved in March 2016 from: <http://www.iweps.be/themes-categorie/accueil-statistiques>.

<sup>71</sup> Dienststelle für Personen mit Behinderung (2016). 'Dienststelle für Personen mit Behinderung – Jahresberichte' [Service for People with Disabilities – Annual reports], retrieved in March 2016 from: <http://www.dpb.be/ueberuns/Jahresbericht.php>; AViQ (2016), 'Publications - L'AWIPH, qu'est-ce que c'est?'

The Brussels Institute for Statistics and Analysis (BISA) publishes figures annually pertaining to nationality by municipality, based on the administrative databases of Statistics Belgium.<sup>72</sup>

#### 4. Key issues

An example of particularly good practice in equality data collection in Belgium is the Socioeconomic Monitoring programme. By cross-referencing data from the National Register and the Crossroads Bank for Social Security, the Socioeconomic Monitoring method enables the mapping of people's labour market participation by their ethnic origin (based on the individual's country of birth or his/her parents' country of birth) or migration background (based on the individual's nationality or previous nationality). Data are collected on a wide range of employment indicators, such as (un)employment rate, (in)activity, mobility between employment statuses and employment in labour market sectors. This method is found to be particularly effective, as it allows measurement of the labour market participation of (among others) people of foreign origin who have obtained Belgian nationality and second generation migrants – groups which previously remained unidentified as they each have Belgian nationality. The Socioeconomic Monitoring method is also highly reliable as it is based on cross-referencing administrative data from the National Register and the Crossroads Bank for Social Security. The data are virtually exhaustive and objective, as they are not based on a sample or on self-reported data.

With the creation of the Socioeconomic Monitoring programme, data on origin and migration background have become available for other institutions and organisations (provided all the conditions for collecting and processing sensitive are met). This potentially means many possibilities for comparing data between different institutional levels and between different data collections and surveys. However, there are problems with data comparability between different institutional levels: the Belgian state, the Flemish government, Flemish provinces and different Flemish cities use data from the National Register and the Crossroads Bank for Social Security with a different operationalisation of origin and/or migration background. Different stakeholders were involved in trying to agree on a common operationalisation throughout the different institutional levels and regions. Although some rapprochement has been achieved, the negotiations did not result in a general agreement even though all parties were made aware of the consequences of not being able to compare data in the future. Besides different operationalisation in data collection, policy measures are sometimes taken with definitions of foreign origin which are different again and this makes their monitoring and evaluation particularly difficult, due to a lack of data that conforms to these different definitions. As these different ways of operationalising origin and migration background continue to be used without further alignment or coordination, there is a risk that in the future other organisations and authorities will choose an even more different operationalisation and definitions will continue to diverge.

For the Socioeconomic Monitoring, the Interfederal Centre for Equal Opportunities asked representatives of people with a migration background how they would view the gathering of data pertaining to origin and, if applicable, under what conditions should it be undertaken. This was done by conducting in-depth interviews with five representatives of Flemish associations of ethnic minorities and three in-depth focus groups with stakeholders from the French Community and the Brussels Capital Region, through the regional Integration Centres. Although in the view of the author this is an

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[Publications – What is the Agency for Quality of Life?], retrieved March in 2016 from: <http://www.awiph.be/documentation/publications/AWIPH/index.html>; VAPH (2015), 'Persbericht: Zorg en ondersteuning voor personen met een handicap: jaarcijfers 2014' [Press release: Care and support for people with disabilities: annual figures 2014], retrieved in March 2016 from: <http://www.vaph.be>.

<sup>72</sup> BISA (2015), 'Population' [Population]. Retrieved in March 2016 from: [www.statistics.irisnet.be/themes/population#.VwtaZvmlRhF](http://www.statistics.irisnet.be/themes/population#.VwtaZvmlRhF).

example of best practice, in general, however, involving minority communities in data collection, processing and/or assessment is not a widespread practice in Belgium.

### 3. Bulgaria

**Experts: Daniela Mayihlova and Alexander Kashumov**

#### 1. Relevant legal framework

Bulgarian legislation does not specifically mention the term “equality data”. At a constitutional level the legal basis for the collection, prohibition of collection and conditions for the collection of personal data is Article 32, para. 2 of the Constitution (1991).<sup>73</sup> This provision prohibits the collection of data regarding any natural person without his/her consent or knowledge except in cases provided by law. Furthermore, the matter is regulated by the provisions of Council of Europe Convention No. 108 for the Protection of Individuals with regard to Automatic Processing of Personal Data, which is directly applicable on the basis of Article 5, para. 4 of the Constitution and takes precedence over potentially contradicting domestic legislation. The Bulgarian legislation is in compliance with Directive 95/46/EC.

The law providing the legal basis for the processing of equality data is the Personal Data Protection Act (PDPA, 2002).<sup>74</sup> Sensitive data are processed subject to the conditions as stated in Article 5 of the PDPA. Article 5, para. 1 sets out a prohibition on the collection and use of data related to ethnicity, race, religion, health, political affiliation, philosophical and political views, membership of political parties or organisations, membership of associations with political, philosophical or trade union purposes, health, sexual life and the human genome. Paragraph 2 of the same provision establishes the grounds for the permissible collection and use of such data. These relate to the protection of life and health; performance of labour law obligations; non-profit purposes under certain conditions; the administration of justice; the purposes of preventive medicine, medical diagnosis; the provision of care or treatment or the management of healthcare services; journalistic purposes; or the purpose of artistic or literary expression.

| Consent | Employment | Health/life | Public | Members | Legal claim | Medicine | Public interest – Other |
|---------|------------|-------------|--------|---------|-------------|----------|-------------------------|
| X       | X          | X           | X      | X       | X           | X        | X                       |

The Statistics Act (1999)<sup>75</sup> provides grounds for the collection for statistical purposes of data regarding race, ethnicity, religion, health, political affiliation, philosophical and political views. According to Article 21, para. 2, these data could be collected with the consent of the respective individual only. The National Statistics Institute established by the Statistics Act conducts different statistical surveys using equality data, including the periodic Census surveys.

<sup>73</sup> Bulgaria, Constitution. Published in State Gazette No. 56 of 13 July 1991, entry into force: 13 July 1991, latest amendments: published in State Gazette No. 100 of 18 December 2015.

<sup>74</sup> Bulgaria, Personal Data Protection Act. Adopted on 21 December 2001, published in State Gazette No. 1 of 4 January 2002, entry into force: 1 January 2002, latest amendments: published in State Gazette No. 15 of 13 February 2013.

<sup>75</sup> Bulgaria, Statistics Act. Adopted on 10 June 1999, published in State Gazette No. 57 of 25 June 1999, entry into force: 28 June 1999, latest amendments: published in State Gazette No. 15 of 15 February 2013, in force since 1 January 2014.



The Census of the Population and Housing Fund Act (2009)<sup>76</sup> provides for the requirements, grounds and procedure for the 2011 Census. According to this law, data related to ethnicity, gender, religion, belief, mother tongue and level of disability were to be collected for the purposes of the 2011 Census.

The Health Act (2004)<sup>77</sup> provides for the collection of data regarding the health status and disability status of individuals for medical, statistical, social security and labour policy purposes.

The Ministry of Interior Act (2014)<sup>78</sup> allows the collection of race, ethnicity, religion, health, political affiliation, philosophical and political views.

The Civil Registration Act (1999)<sup>79</sup> provides for the national collection of data on nationality, place and date of birth, gender, age and civil status of individuals for the purposes of the fulfilment of governmental and local authority obligations and tasks.

The principle of equality is guaranteed by Article 6, para. 2, sentence 2 of the Bulgarian Constitution (1991), which prohibits any restrictions or privilege based on race, nationality, ethnicity, gender, origin, religion, education, views, political affiliation, personal or social status or economic status.

The Protection against Discrimination Act (2003)<sup>80</sup> provides for protection against any form of discrimination. It distinguishes between direct and indirect discrimination and prohibits it on the grounds of gender, nationality, ethnicity, the human genome, citizenship, origin, religion and belief, education, views, personal and social status, disability, age, sexual orientation, family status and economic situation. The list is not exhaustive and may include other grounds provided for by law or international instruments binding on Bulgaria.

## **2. Definitions and categories used to collect equality data**

The general legal provision relating to the collection of special categories of data is Article 5 of the PDPA.<sup>81</sup> It lists the following categories of data in the definition of “special categories of data”: data related to race, ethnicity, political, philosophical and religious views, membership of political parties and organisations, membership of associations with political, philosophical, religious or trade union purposes, health, sexual life and the human genome. The provision applicable to the collection of special categories of data for public statistics is Article 21, para.2 of the Statistics Act, where the following categories of data are listed: data related to race, ethnicity, religion, health, political affiliation, philosophical and political views. These categories of data may only be collected with the consent of the respective individuals.

The term “religious views” is understood for the purposes of the Census (2011) as affiliation to a religion or belief. The Census statistics form includes the categories of

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<sup>76</sup> Bulgaria, Census of the Population and Housing Fund Act. Adopted on 15 May 2009; published in State Gazette No. 39 of 26 May 2009, entry into force: 29 May 2009, latest amendments: published in State Gazette No. 9 of 29 January 2011.

<sup>77</sup> Bulgaria, Health Act. Adopted on 29 July 2004; published in State Gazette No. 70 of 10 August 2004, entry into force: 1 January 2005, latest amendments: published in State Gazette No. 102 of 29 December 2015.

<sup>78</sup> Bulgaria, Ministry of Interior Act. Adopted on 28 May 2014; published in State Gazette No. 53 of 27 June 2014, entry into force: 30 June 2014, latest amendments: published in State Gazette No. 61 of 11 August 2015, in force since 1 January 2016.

<sup>79</sup> Bulgaria, Civil Registration Act. Published in State Gazette No. 67 of 27 July 1999, last amendment published in State Gazette No. 55 of 21 July 2015.

<sup>80</sup> Bulgaria, Protection Against Discrimination Act. Published in State Gazette No. of 30 September 2003, in force since 1 January 2004; last amendment published in State Gazette No. 26 of 7 April 2015.

<sup>81</sup> Bulgaria, Personal Data Protection Act. Published in State Gazette No. 56 of 13 July 1991, entry into force: 13 July 1991, latest amendments: published in State Gazette No. 100 of 18 December 2015.



both religion and belief separately. The latter also covers atheist views. The method used in Bulgaria for the collection of these data is self-identification.

Ethnicity is understood as affiliation to an ethnic group. The main ethnic groups in Bulgaria are Bulgarian, Turkish and Roma and the Census form specifically mentions them. On the form, other ethnicities fall under the category of "other ethnic group". The collection of this category of equality data is based solely on self-determination and such data are collected only with the consent of the concerned individual.

The category of gender relates only to "man" and "woman". The method used in Bulgaria for collecting these data is self-identification and third-party categorisation.

Categories such as "homosexuality", "bisexuality" and other sexual identities are not recognised by law. Marriage is understood as a relationship between a man and a woman. Other forms of partnership are not recognised under family law. However, data about partnerships between men and women apart from marriage are collected for different purposes, for example, in cases of adoption, assessment of the financial status of households etc. Same-sex partnerships or marriages are not recognised under Bulgarian law, nor is information of that kind collected. There is no specific provision under Bulgarian law for transgender people to change their name, gender and ID or other information.

Data about sexual life are not officially collected. The category is provided under the law and such data may be collected. However, there is no information about surveys using these data.

### **3. Practical implementation**

Equality data are collected mainly with the consent of the data subject and do not solely focus on the issue of equality and discrimination. Surveys conducted by civil society organisations usually collect data on gender, age and locality of residence.<sup>82</sup> Usually categories relating to sexual orientation, ethnicity and religion are not directly targeted, due to personal data protection considerations.

Equality data are collected mainly for the purposes of statistics as permitted by Article 5, para. 2 of the PDPA, the Statistics Act and the law on the Census. Generally, the scope of equality data collected extends to race, ethnicity, religion, health, political affiliation and philosophical and political views. Data about sexual orientation are not collected at all.

Data collection for the purposes of the Census pertains to data about age, ethnicity, religion, belief, gender and mother tongue. Belief also includes atheist views. The Census is performed at intervals of 10 years. The first census in Bulgaria was conducted in 1880 and afterwards at intervals of five to 10 years (1887, 1892, 1900, 1905, 1910, 1920, 1926, 1934, 1946, 1956, 1965, 1975, 1985, 1992, 2001, 2011). The data collected are used for policy making in the sectors of health, education, social security assistance and finances etc.

The National Statistics Institute conducts different surveys, collecting one or more categories of special data for different purposes. The Income and Living Conditions survey (SILC) is conducted every year (2005-2014) based on a four-year rotation panel

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<sup>82</sup> For example: Angelov, G. and Vankova, Z. (2011) *Българската трудова миграция: има ли смисъл от ограничения в ЕС?* [Bulgarian labour migration: arguments for limitations in the EU], Open Society Foundation, Sofia, available at: [http://osi.bg/cyeds/downloads/Bq\\_trudova\\_migracia\\_BG\\_FINAL.pdf](http://osi.bg/cyeds/downloads/Bq_trudova_migracia_BG_FINAL.pdf); *Обществено мнение и социални нагласи в България през април 2015 г.* [Public opinion and social attitudes in Bulgaria], Open Society Foundation, Sofia, published 2015, available at: [http://osi.bg/cyeds/downloads/Public\\_opinion\\_April\\_2015.pdf](http://osi.bg/cyeds/downloads/Public_opinion_April_2015.pdf).

of families, and collects data about education and health. SILC is a tool for ensuring actual and concise data on the distribution of income, level and structure of poverty and social isolation. This survey is used for the purposes of the overall EU-wide survey (EU-SILC).<sup>83</sup>

The Labour Force Survey (LFS) is a sample statistical survey carried out through households and is also conducted by the National Statistics Institute. The main purpose of the survey is to provide data on the working status of the population aged 15 years and over and on the main characteristics of the employed, unemployed and people who are out of the labour force in the Republic of Bulgaria. The data on members of the selected households are collected through face-to-face interview using a questionnaire. The survey collects data on the economic activity of those interviewed by age, sex, education, urban/rural areas, marital status and occupation. For the unemployed, information is also recorded on the duration of their unemployment, job hunting methods used, existence of previous work experience, etc..<sup>84</sup>

The Health Survey conducted by the National Statistics Institute is part of the European Health Interview Survey (EHIS), within the framework of the European Statistical System. The EHIS aims to measure, on a harmonised basis and with a high degree of comparability among EU Member States, the health status, lifestyle (health determinants) and healthcare services use of EU citizens. The Bulgarian Health Survey has been conducted in two rounds (2008 and 2014). The data source is the EHIS questionnaire. The questionnaire consists of three parts: a household survey; a face-to-face interview; and a self-completion part. In addition to the questionnaire, five show cards are used. A face-to-face PAPI interview at the respondent's home is chosen as a survey method. It is a voluntary survey and no substitution is allowed.<sup>85</sup>

Bulgaria participated in four out of the overall six rounds of the European Social Survey (ESS). These were rounds 3 (2006), 4 (2008), 5 (2010) and 6 (2012, conducted in 2013). The survey measures people's attitudes, beliefs and behaviour patterns. The national supporting entity is the Scientific Researches Fund attached to the Ministry of Education and Science. It is a survey of the population aged 15 years and over. The method for data collection is direct interview. Every two years, face-to-face interviews are conducted with newly selected, cross-sectional samples. The number of selected respondents was 3,200.<sup>86</sup> There are basic and additional questionnaires used as tools for the survey. The questionnaire contains questions about state of health, religion, belief, participation in religious worship, language and belonging to an ethnic minority.<sup>87</sup>

In 2000-2014 the National Statistics Institute conducted a survey of primary and secondary education. The main categories of data collected about the students were: gender, level of education, profession, mother tongue, foreign languages spoken etc.

The issue of equality data collection is regularly a subject of public debate. The main point in this respect is the balance between the use of equality data collection for policy planning related to improving the situation of certain vulnerable groups and the general prohibition on the collection of sensitive data, especially without the explicit consent of the data subjects. Thus, in the case of the national Census, the form includes questions regarding ethnic and/or national origin by self-identification, mother tongue and religion<sup>88</sup>. These questions are not, however, mandatory and each interviewee can

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<sup>83</sup> [www.nsi.bg/bg/content/3218/доходи-на-домакинствата](http://www.nsi.bg/bg/content/3218/доходи-на-домакинствата).

<sup>84</sup> See information at [www.nsi.bg/en/node/12472](http://www.nsi.bg/en/node/12472).

<sup>85</sup> See information at: [www.nsi.bg/en/content/13659/ehis-wave-2-2014](http://www.nsi.bg/en/content/13659/ehis-wave-2-2014).

<sup>86</sup> See data about round 6 (2012): [www.europeansocialsurvey.org/data/country.html?c=bulgaria](http://www.europeansocialsurvey.org/data/country.html?c=bulgaria).

<sup>87</sup> The question just asks whether or not the respondent belongs to an ethnic minority, without any specification of the ethnic group.

<sup>88</sup> National Institute of Statistics, 2011 Population and Housing Census, Census form, available in English at: [www.nsi.bg/census2011/PDOCS2/karta\\_Census2011\\_en.pdf](http://www.nsi.bg/census2011/PDOCS2/karta_Census2011_en.pdf).

decide whether or not to answer. The questionnaire also includes questions connected with health status. These are also not mandatory and each interviewee can decide on whether or not to answer.

The body which oversees the collection and use of personal data including equality data is the Commission on Personal Data Protection as established by the PDPA in 2002. It oversees the proper data processing by data controllers (both public bodies and private entities), is in charge of data controller registration, conducts investigations, hears complaints, imposes sanctions (fines), issues recommendations, guidance and instructions for proper implementation of data controller duties, oversees cross-border data flow, issues newsletters presenting and summarising its activities, conducts training and cooperates and networks with the EU data protection authority and other EU Member States data protection authorities.

#### **4. Key issues**

The key issue in Bulgaria is the absence of harmony between equality legislation and equality data collection in practice. In many cases national and local institutions do collect sensitive data, though this falls within the scope of the legal restrictions.<sup>89</sup> However, this is unofficial and subsequently the institutions do not publish the results and nor do they release information concerning the data gathered. Thus the information cannot be used for policy planning and strategising.

There are also cases where information is collected regardless of the lack of consent from the individuals concerned. In many of these cases, the individuals concerned are not even asked and the information is collected purely on the basis of the perception of the administrator/official.<sup>90</sup>

The information which concerns equality data and is gathered through the national Census is frequently unreliable, as the statistical experts do not collaborate with the minorities concerned.<sup>91</sup> As a result, many members of different minorities do not answer the questions regarding sensitive information, due to a lack of understanding regarding how the answers will be used.

However, there are cases where non-governmental entities conduct independent research based on carefully worked-out methodologies, which include collaboration with the respective communities. In such cases of collaboration with minority disadvantaged groups and equality advocates, good examples of equality data collection become possible. Examples in this respect can be given with regard to the research conducted by the national Open Society Foundation, including the following: a report concerning Roma inclusion in the labour market<sup>92</sup> and a report on good practice in the field of Roma

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<sup>89</sup> In October 2012 the Equal Opportunities Initiative Association, under the Access to Public Information Act, issued a request to the Sofia municipality for information regarding the number and proportion of Roma students in mainstream schools in the Krasna Polyana sub-district of Sofia. The information requested was denied, with the argument that the municipality does not collect this information, in accordance with the restrictions in the Personal Data Protection Act. In November 2012 information regarding the exact number and proportion of Roma students in Krasna Polyana schools was provided by the administrators of Sofia municipality to the country facilitator of the Roma Education Fund in Bulgaria, in connection with a project proposal from Sofia municipality submitted to the Roma Education Fund.

<sup>90</sup> Police authorities collect information regarding the ethnicity of people who are subject to pre-trial investigations. The ethnicity of these people is determined by the investigating officer, without requesting self-identification from the individual concerned.

<sup>91</sup> In 2011, Romani Baht Foundation, a local Sofia-based Roma organisation, undertook a monitoring exercise of the Census in the Fakulteta Roma district in Sofia. The results showed that only the families living on streets which border the Roma settlement were interviewed.

<sup>92</sup> Zahariev, B. and Yordanov, I. (2014) *Evaluation of Roma inclusion on the labour market through mainstream and targeted employment measures and programs funded by the EU*, published at: [http://www.osf.bg/cyeds/downloads/Roma\\_labour\\_market\\_eng.pdf](http://www.osf.bg/cyeds/downloads/Roma_labour_market_eng.pdf)

inclusion,<sup>93</sup> both of which result from research implemented by the experts at the Open Society Foundation.

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<sup>93</sup> Lazarov et al (2012) *Stocktaking of good practices with Roma inclusion interventions*, Sofia, published at: [http://www.osf.bg/cyeds/downloads/Report\\_good\\_practices\\_eng\\_Final\\_ISBN.pdf](http://www.osf.bg/cyeds/downloads/Report_good_practices_eng_Final_ISBN.pdf)

## 4. Croatia

**Expert: Antonija Petričušić**

### 1. Relevant legal framework

The Croatian Personal Data Protection Act<sup>94</sup> has been harmonized fully with the Directive 95/46/EC on the Protection of individuals with regard to the processing of personal data and on the free movement of such data.<sup>95</sup> This Act regulates personal data protection of natural persons and supervision over collecting, processing and use of personal data.

In accordance with the Constitution everyone is guaranteed the safety and secrecy of personal data. Without consent from the person concerned, personal data may be collected, processed and used only under conditions specified by law.<sup>96</sup> The Constitution furthermore stipulates that protection of data and supervision of the work of information systems in the Republic shall be regulated by law, and that the use of personal data contrary to the purpose of their collection shall be prohibited.<sup>97</sup>

The Croatian legislation makes no explicit reference to the state's/public authorities' obligation to collect equality data. Several pieces of law regulate the collection of personal data: The Official Statistics Act,<sup>98</sup> the Act on the Census of Population, Households and Dwellings in the Republic of Croatia in 2011,<sup>99</sup> and the Antidiscrimination Act.<sup>100</sup> The Personal Data Protection Act prohibits the collection and processing of special categories of personal data that might be considered equality data.<sup>101</sup> The preparation, collection, production, usage and storage of data for administrative purposes are also codified in other laws and regulations.<sup>102</sup>

The *Official Statistics Act* regulates the fundamental principles of official statistics, the organisation, status, activities and coordination of the official statistics system, the Development Strategy of the Official Statistics of the Republic of Croatia, the Programme of Statistical Activities of the Republic of Croatia, the collection, processing and storage of statistical material, statistical registers, the dissemination and use of statistical data, the confidentiality and protection of statistical data, international cooperation in statistics and other issues relevant to official statistics.<sup>103</sup>

The *Act on the Census of Population, Households and Dwellings* lays down the content, preparation, organisation and execution of the Census in 2011, confidentiality of the Census data, obligations of state and other bodies involved in the execution of the

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<sup>94</sup> Act on Personal Data Protection, Official Gazette No. 103/03, 118/06, 41/08 and 130/11.

<sup>95</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995L0046:en:HTML>

<sup>96</sup> Article 37 (1) of the Constitution of the Republic of Croatia, Official Gazette 56/90, 135/97, 113/00, 28/01 and 76/10.

<sup>97</sup> Article 37 (2) and (3) of the Constitution of the Republic of Croatia.

<sup>98</sup> Official Statistics Act, Official Gazette 103/03, 75/09, 59/12.

<sup>99</sup> Act on the Census of Population, Households and Dwellings in the Republic of Croatia in 2011, Official Gazette 92/10.

<sup>100</sup> Antidiscrimination Act, Official Gazette 85/08, 112/12.

<sup>101</sup> Article 8 of the Personal Data Protection Act, Official Gazette 103/03.

<sup>102</sup> Constitutional Act on the Rights of National Minorities (Official Gazette 155/02, 47/10, 80/10, 93/11), Anti-Discrimination Act (Official Gazette 85/08, 112/12), Criminal Code (Official Gazette 125/11, 144/12, 56/15, 61/15), Labour Act (Official Gazette 93/14), Gender Equality Act (Official Gazette 82/08), Voters' Lists Act (Official Gazette 19/07), Media Act (Official Gazette 59/04), Scientific Activity and High Education Act (Official Gazette 123/03), Asylum Act (Official Gazette 79/07, 88/10, 143/13), Volunteers Act (Official Gazette 58/07), Same-Sex Life Partnership Act (Official Gazette 92/2014), Free Legal Aid Act (Official Gazette 43/13), Act on the Croatian Registry of Persons with Disability (Official Gazette 80/13, 137/13), Act on Police Affairs and Competences (Official Gazette 76/09, 92/14), and the National Programme on the protection and promotion of human rights 2013–2016.

<sup>103</sup> Article 1 of the Official Statistics Act.

Census, rights and obligations of citizens as Census data providers, as well as all those involved in the execution of the Census and data processing after the Census, publishing of Census results and financing of the Census.<sup>104</sup>

The *Antidiscrimination Act* prescribes that the central body responsible for the suppression of (i.e. the Ombudsperson) is in charge of collecting and analysing statistical data on discrimination cases.<sup>105</sup>

In addition to these laws, two additional regulations are regulating the collection of, *inter alia*, equality data: *Regulation on the method of maintaining records on personal data filing system and the form of such records* and *Regulation on the manner of storing and special measures of technical protection of the special categories of personal data*.<sup>106</sup>

Although the collection of equality data is not regulated by law, equality data might be regarded as "special categories of personal data" by the Personal Data Protection Act. It stipulates it is forbidden to collect and further process personal data related to racial or ethnic origin, political opinion, religious or other beliefs, union membership, health or sexual life and personal data on criminal and misdemeanour proceedings (so-called special categories of personal data).<sup>107</sup> As an exception, these data may be collected and further processed under conditions prescribed by law, and their processing must be specially marked and protected in accordance with the *Data Security Regulation*.<sup>108</sup> Processing of personal data by the personal data filing system controller is strictly prescribed by law.<sup>109</sup> Firstly, personal data may be collected for a purpose known to the data subject, explicitly stated and in accordance with the law, and may be subsequently processed only for the purposes it has been collected for or for a purpose in line with the purpose it has been collected for. Further processing of personal data for historical, statistical or scientific purposes shall not be considered as incompatible provided that appropriate protection measures are in place.<sup>110</sup> Secondly, personal data must be relevant for the accomplishment of the established purpose and shall not be collected in quantities more extensive than necessary for achieving the purpose defined.<sup>111</sup> Thirdly, personal data must be accurate, complete and up-to-date.<sup>112</sup> Fourthly, personal data must be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed. The appropriate protection measures for personal data stored for longer periods of time for historical, statistical or scientific use are established by special acts.<sup>113</sup> Personal data may be collected and subsequently processed: (i) with the consent of the data subject, or (ii) in cases established by law.<sup>114</sup> In cases of personal data collecting and processing with the consent of the data subject, such personal data may be processed only for the purpose the data subject has given his/her consent for.<sup>115</sup> Personal data may be collected and subsequently processed without the consent of the data subject: (i) for the purpose of carrying out legal obligations to which personal data filing system controller is subject, or (ii) for the purpose of protecting the life or physical integrity of the data subject or another person in cases when the data subject is

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<sup>104</sup> Article 1 of the Act on the Census of Population, Households and Dwellings in the Republic of Croatia in 2011.

<sup>105</sup> Article 12 (2.7) of the Antidiscrimination Act..

<sup>106</sup> Regulation on the method of maintaining records on personal data filing system and the form of such records, Official Gazette 105/04; and Regulation on the manner of storing and special measures of technical protection of the special categories of personal data, Official Gazette 139/04.

<sup>107</sup> Article 8 of the Personal Data Protection Act.

<sup>108</sup> Regulation on the manner of storing and special measures of technical protection of the special categories of personal data, Official Gazette 139/04.

<sup>109</sup> Article 5 (8) of the Personal Data Protection Act.

<sup>110</sup> Article 6 (1) of the Personal Data Protection Act.

<sup>111</sup> Article 6 (2) of the Personal Data Protection Act.

<sup>112</sup> Article 6 (3) of the Personal Data Protection Act.

<sup>113</sup> Article 6 (4) of the Personal Data Protection Act.

<sup>114</sup> Article 7 (1) of the Personal Data Protection Act.

<sup>115</sup> Article 7 (2) of the Personal Data Protection Act.

physically or legally unable to give his/her consent, or (iii) if data processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller personal data filing system controller, or (iv) if the data subject discloses such data voluntarily.<sup>116</sup> The data subject has the right to revoke his/her consent at any time, and request the termination of further processing of his/her data, unless these data are processed for statistical purposes when personal data can no longer be used for the identification of the person it relates to.<sup>117</sup>

| Consent | Employment | Health/life | Public | Members | Legal claim | Medicine | Public interest – Other |
|---------|------------|-------------|--------|---------|-------------|----------|-------------------------|
| X       | X          | X           | X      | X       | X           | X        |                         |

The Census of Population, Households and Dwellings 2011 was carried from 1 to 28 April 2011 by the Central Bureau of Statistics. It comprised a number of questions relating to equality data. Official statistical data are broken down by variables such as age, disability, ethnic origin, and religion as the Census questionnaire, filled in for each person, consisted of, *inter alia*, the following equality strands: sex; date of birth; citizenship; ethnicity; mother tongue; religion; difficulties in performing everyday activities; type of difficulty; physical mobility of the concerned person; cause of difficulties; use of the assistance of another person in performing everyday activities, etc.<sup>118</sup>

The mandate of the Ombudsperson of the Republic of Croatia in equality data collection has been prescribed by the *Anti-Discrimination Act*.<sup>119</sup> The collection and analysis of statistical data on discrimination cases by the Ombudsperson covers all grounds of discrimination (race, ethnic affiliation or colour, gender, language, religion, political or other belief, national or social origin, property, trade union membership, education, social status, marital or family status, age, health condition, disability, genetic heritage, gender identity and expression, sexual orientation). The Ombudsperson publishes annually the statistical data on discrimination complaints addressed to the Office of General Ombudsperson and three special Ombudspersons (for gender equality, for children, for persons with disabilities), broken-down by different criteria, and the statistical data on court cases related to discrimination.

The Government Office for Human Rights and Rights of National Minorities<sup>120</sup> is keeping a Hate Crimes Protocol, a track record system in which hate motivated crimes are being recorded.<sup>121</sup> In spite of the efforts elaborated in the EU pre-accession Instrument for Pre-accession Assistance (IPA)<sup>122</sup> project "Establishing a comprehensive system for

<sup>116</sup> Article 7 (3) of the Personal Data Protection Act.

<sup>117</sup> Article 7 (4) of the Personal Data Protection Act.

<sup>118</sup> Act on the Census of Population, Households and Dwellings in the Republic of Croatia in 2011, Official Gazette 92/10. Results of the census available at [http://www.dzs.hr/default\\_e.htm](http://www.dzs.hr/default_e.htm).

<sup>119</sup> Article 12 (2.7) of the Antidiscrimination Act.

<sup>120</sup> Croatian Government's Office for Human Rights and Rights of National Minorities, <http://www.uljppnm.vlada.hr/>.

<sup>121</sup> Article 2 of the Regulation on the Croatian Government's Office for Human Rights and Rights of National Minorities, Official Gazette 42/2012. Protocol on Acting in a Case of Hate Crime is available at <https://pravamanjina.gov.hr/UserDocsImages/arhiva/protokoli/Protokol%20o%20postupanju%20u%20slu%C4%8Daju%20zlo%C4%8Dina%20iz%20mr%C5%BEenje.pdf>. The data on hate crimes can be accessed at <https://pravamanjina.gov.hr/suzbijanje-zlocina-iz-mrznje/602>.

<sup>122</sup> The Instrument for Pre-Accession Assistance (IPA) is the means by which the EU supports reforms in the 'enlargement countries' with financial and technical help. The IPA funds build up the capacities of the

antidiscrimination protection” and despite earlier official announcements of the Croatian authorities, the Equality Database, that was supposed to be set up at the Government Office for Human Rights and National Minorities, has not become operational yet. With the financial support of the EU pre-accession assistance programme IPA, the Office of the General Ombudsperson in partnership with the Office for Human Rights and the Rights of National Minorities of the Republic of Croatia implemented the project “Establishing a comprehensive system for antidiscrimination protection”.<sup>123</sup> One of the planned project deliverables was development of an efficient system for monitoring reported cases of discrimination and for collecting and monitoring equality data. However, interviews with relevant stakeholders revealed this project goal has not been reached and the Equality Database is yet not in place.<sup>124</sup>

## 2. Definitions and categories used to collect equality data

The equality grounds featured in this project are neither defined in the Official Statistics Act nor in the Anti-Discrimination Act.

**Disability:** Data pertaining to disability is collected on the basis of: self-identification; third party categorisation (by means of an evaluation on the degree of disability by medical professionals); proxies (work limitations and health are often used as proxies for disability); and official documents, such as a certificate of disability that is granted by committees responsible for determining the disability level of individuals.

**Age:** Data on age is usually collected in all national surveys and administrative processes, on the basis of self-identification and official documents, such as an identity card, passport, birth certificate.

**Ethnic or racial origin:** Although there is no definition of race and ethnic origin in the Croatian legislation, the Constitutional Act on the Rights of National Minorities defined a **national minority** as “a group of Croatian citizens whose members have traditionally inhabited the territory of the Republic of Croatia and whose ethnic, linguistic, cultural and/or religious characteristics differ from the rest of the population, and who are motivated to preserve these characteristics”.<sup>125</sup> The Methodology of the 2011 Census of Population, Households and Dwellings defined “ethnicity” as “a characteristic denoting a person’s affiliation to a particular ethnic group.

**Ethnicity** is also interpreted as “a sense of belonging to a society (nation), distinguished by ethnic, lingual and cultural affinity of its members as well as awareness of the integrity of their own community and its special qualities in relation to other such communities.”<sup>126</sup> According to *the Act on the Census of Population, Households and Dwellings* in the Republic of Croatia in 2011, persons could freely declare their ethnic affiliation. But if a person did not want to declare, enumerator marked the answer “not declared”. The 2011 Census data on ethnicity are presented so that first are listed the data on Croats as the majority people, then those on 22 ethnic minorities in the Republic of Croatia in the alphabetical order, followed by data on other ethnicities, data on persons who declared their regional and religious affiliation, data on those whose answers could not be classified, and at the end data on not declared persons and on those of unknown ethnicity (answer was not given).

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countries throughout the accession process. More info at

[http://ec.europa.eu/enlargement/instruments/overview/index\\_en.htm](http://ec.europa.eu/enlargement/instruments/overview/index_en.htm).

<sup>123</sup> Project description available at <http://div-programi.hr/ombudsman.hr/en/top-stories-3/projects/212-project-establishing-a-comprehensive-system-for-anti-discrimination-protection>.

<sup>124</sup> Interview with Mrs. Silvija Trgovec and Mrs. Tanja Vlašić, The Office of the Ombudsperson, 15 January 2016.

<sup>125</sup> Article 15 of the Constitutional Act on the Rights of National Minorities, Official Gazette 80/10.

<sup>126</sup> Methodology of the 2011 Census of Population, Households and Dwellings, <http://www.dzs.hr/Eng/censuses/census2011/results/censusmetod.htm>.



**Sexual Orientation:** Neither the *Anti-Discrimination Act* nor the *Same-Sex Life Partnership Act*<sup>127</sup> defined sexual orientation/gender identity. The definition of sexual orientation has not been discussed in court cases regarding discrimination based on sexual orientation either. Data on sexual orientation is not collected in the Census. The latest Census personal questionnaire contained a question on same-sex cohabitations. This entry was a result of LGBTI civil society organizations advocacy.<sup>128</sup> Self-identification is the method used for the collection of such data.

**Gender Identity:** Data pertaining to gender identity is collected on the basis of self-identification and official documents, such as an identity card, passport, or birth certificate. According to national legislation, individuals who have undergone sex change surgery can change the gender (and the name) ascribed to them at birth on their personal documents (e.g. birth certificate etc.).<sup>129</sup>

In sum, the personal data is collected on the basis of self-identification for all grounds and sometimes also third-party categorisation, for example when it comes to realisation of the rights of national minorities (particularly regarding Roma minority). The sources of data are by at large official surveys, where self-identification is usually the method. Rarely, when it comes to realisation of Roma minority pupils, the observation method (third party categorisation) can be taken into account.

### 3. Practical implementation

The main institutions/bodies that are involved in the collection of equality data in Croatia are the following.

**The Croatian Bureau of Statistics (CBS)** is the main producer, disseminator and coordinator of the Official Statistical System of the Republic of Croatia.<sup>130</sup> A predominant amount of equality data in Croatia derives from the Census of Population, Households and Dwellings conducted every ten years by the CBS.<sup>131</sup> Other sources of equality data, also available at the CBS website, are the Labour Force Survey (LFS) and the 'Statistics on Income and Living Conditions' (EU-SILC) survey. The LFS, the EU-SILC survey and the Census all collect data on age. As far as ethnic/racial background is concerned, the LFS and the EU-SILC use citizenship/country of birth as a proxy, whereas the Census offers the possibility to declare one's ethnic affiliation and religion. However, the major national official surveys do not collect data on sexual orientation, on gender identity and on multiple grounds.<sup>132</sup> The Bureau of Statistics publishes on its website data on population by ethnicity, population by mother tongue, population by religion, population by ethnicity, share of ethnic minorities by counties, population by religion, population by country of citizenship, population by mother tongue, population by ethnicity and religion, population by ethnicity and age, share of national minorities by counties, average age of population, by ethnicity, population by ethnicity, by towns/municipalities. Other recognized producers of official statistics are state administration offices within the counties and the administrative body of the City of Zagreb, the Croatian National Bank and other authorised bodies.<sup>133</sup>

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<sup>127</sup> Same-Sex Life Partnership Act, Official Gazette 92/2014.

<sup>128</sup> Interview with Mrs. Dubravka Rogić-Hadžalić, the Croatian Bureau of Statistics, 22 December 2015.

<sup>129</sup> Article 9a of the Vital Records Act, Official Gazette 96/93, 76/13.

<sup>130</sup> Article 8 of the Official Statistics Act. Other recognized producers of official statistics are state administration offices within the counties and the administrative body of the City of Zagreb, the Croatian National Bank and other authorised bodies. Article 4 (2) of the Official Statistics Act.

<sup>131</sup> The CBS publishes data on population by ethnicity, by mother tongue, by religion, by ethnicity, share of ethnic minorities by counties, by religion, by country of citizenship, by mother tongue, by ethnicity and religion, by ethnicity and age, share of national minorities by counties, average age of population, by ethnicity. Available at [http://www.dzs.hr/default\\_e.htm](http://www.dzs.hr/default_e.htm).

<sup>132</sup> Email consultation with Mrs. Dubravka Rogić-Hadžalić, the Croatian Bureau of Statistics, 28 April 2016.

<sup>133</sup> Article 4 (2) of the Official Statistics Act. The Programme of Statistical Activities of the Republic of Croatia 2013 – 2017 determines the following bodies as the producers of the official statistics: the Environmental

**The Office of the Ombudsperson** publishes statistical data on the occurrence of discrimination. It collects and analyses complaints data, informs the Croatian Parliament on the occurrence of discrimination in its regular annual reports and, if required, extraordinary reports, and has to conduct surveys concerning discrimination.<sup>134</sup> The General Ombudsperson has produced and published several studies on discrimination occurrences in cooperation with CSOs.<sup>135</sup> In preparation of its regular reports, opinions and recommendations on the occurrence of discrimination, the Ombudsperson needs to consult social partners and civil society organisations, churches and religious organisations.<sup>136</sup> The Anti-Discrimination Act endows judicial bodies with a responsibility to keep records of court cases related to discrimination and of discrimination grounds in the court proceedings. The courts are submitting the statistical data to the Ministry of Justice.<sup>137</sup> In addition, three special Ombudsperson (the Ombudswoman for Gender Equality, the Ombudswoman for Persons with Disabilities and the Ombudswoman for Children) keep records of discrimination cases falling within their competence.<sup>138</sup> The Ombudsperson's reports are disclosing discriminatory activities related to grounds such as ethnic/racial origin, sexual orientation, gender identity and other grounds of discrimination more visible. The most frequent ground found in discrimination complaints is on a regular basis race or ethnic origin, skin colour and national origin which constitutes approximately 30% of the total number of received complaints.

The list of public authorities that collect equality data for various (mainly administrative) purposes includes, among others: the Ministry of Justice, the Ministry of Interior, the Ministry of Social Policy and Youth, the Ministry of Science, Education and Sports, the Ministry of Public Administration, the Croatian National Institute of Public Health, the Croatian Health Insurance Fund the Croatian Employment Service, the Croatian Pension Insurance Fund,

#### 4. Key issues

- **Although** equality data are collected by numerous official institutions; a systematic collection thereof that would allow for disaggregated data by gender, age, ethnicity, race, sexual orientation, education, type of disability, health, housing, etc.) has not yet been put in place.
- There are still no general non-legislative or policy measures pertaining to equality data collection.
- There was an attempt to establish the Equality Database, that was supposed to be set up at the Government Office for Human Rights and National Minorities, but the Database has not become operational.

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Protection Agency, the Croatian Regulatory Authority for Network Industries, the Croatian Institute for Public Health, the Ministry of Finance, the Ministry of Agriculture and the Ministry of the Interior.

<sup>134</sup> Article 12 (2.8 and 2.9) of the Anti-Discrimination Act. Article 12 (2.8 and 2.9) of the Antidiscrimination Act. Reports on the Incidence of Discrimination by the Office of the Ombudsperson are available in Croatian at <http://ombudsman.hr/hr/izvjesca-hr> and in English at <http://ombudsman.hr/en/reports>. Surveys on discrimination were also conducted by the Ombudswoman for Gender Equality. Her surveys on discrimination of women in labour market, education and in politics are in Croatian available at <http://www.prs.hr/index.php/analize-i-istrazivanja> and her annual reports are available in English at <http://www.prs.hr/index.php/english/annual-reports>.

<sup>135</sup> Ured za ljudska prava Vlade RH, Ured pučkog pravobranitelja i Centar za mirovne studije, 2009, Istraživanje o stavovima i razini svijesti o diskriminaciji i pojavnim oblicima diskriminacije, <http://www.antidiskriminacija.com/wp-content/uploads/2013/07/Istra%C5%BEivanje-o-stavovima-i-razini-svijesti-o-diskriminaciji-i-pojavnim-oblicima-diskriminacije.pdf> Centar za mirovne studije, Zastupljenost i indikatori diskriminacijskih i ksenofobičnih stavova u Republici Hrvatskoj, 2013, <http://www.antidiskriminacija.com/istrazivanje-o-diskriminaciji/> Ured pučkog pravobranitelja, 2012, Istraživanje o stavovima i razini svijesti o diskriminaciji i pojavnim oblicima diskriminacije 2012, <http://www.antidiskriminacija.com/wp-content/uploads/2013/07/Istrazivanje-o-stavovima-i-razini-svijesti-o-diskriminaciji-i-pojavnim-oblicima-diskriminacije-2012.pdf>

<sup>136</sup> Article 15 of the Anti-Discrimination Act.

<sup>137</sup> Article 14 (1) of Anti-Discrimination Act.

<sup>138</sup> Article 14 (2) of Anti-Discrimination Act.

- The obligation of the state to collect 'appropriate information, including statistical and research data' (Article 31 of the UN CRPD) on persons with disabilities has been partially met by including six questions relating to persons with disabilities in the 2011 Census of Population, Households and Dwellings. However, there are still no disability specialized records that would serve as clear indicators to identify obstacles/problems of persons with disabilities.
- The most elaborated diversity monitoring has been conducted by several NGOs active in the anti-discrimination field and who advocate for certain vulnerable groups (e.g. national minorities, immigrants, LGBTI persons, etc.).
- The equality data collected in Croatia is inadequate, comes from a variety of sources and is far from homogeneous with respect to definitions and data collection methods.

## 5. Cyprus

**Expert: Nicos Trimikliniotis**

### 1. Relevant legal framework

#### *Legislation protecting private life and personal data*

General provisions protecting privacy can be found both in the Constitution (Article 15) and in the ECHR (Article 8), which was ratified by Cyprus on 6 October 1962 and along the lines of which the Cypriot Constitution was modelled.

- The Constitution guarantees the right to privacy and prohibits interference with the exercise of this right except as necessary in the interests of the security of the Republic or the constitutional or public order or public health etc. or for the protection of other constitutional rights.<sup>139</sup>
- The processing of “sensitive” data is defined as the processing of data on a person’s race, politics, health, religion, sexual life, criminal record, etc.<sup>140</sup>
- National data protection legislation prohibits the collection and processing of sensitive personal data and lists the circumstances under which this is exceptionally allowed. These include: (a) Where processing is necessary for the satisfaction of a lawful interest which is superior to the rights and fundamental freedoms of the subject of the data; (b) Processing concerns exclusively data that the subject has published or is necessary for the recognition or the exercise of a right before a court; (c) Processing concerns exclusively statistical, research, scientific or historical reasons, subject to ensuring that measures are taken to protect the subjects of the data.<sup>141</sup> The law defines “sensitive data” as encompassing all the elements found in the definition of the Data Collection Directive but additionally includes sexual orientation and data pertaining to criminal prosecutions or convictions. The definition does not cover age, however, and disability is not explicitly mentioned, but the reference to “health” contained in the Directive is repeated in the Cypriot law.

#### *Legislation permitting the collection of data*

There is no single or unified mechanism for collecting equality data in Cyprus and therefore no single targeted piece of legislation regulating the collection of equality data. Rather, different bodies collect different data in furtherance of their mandates from which equality-relevant conclusions can be drawn. Some of these data collection practices are supported by legislation whilst others are merely based on policy. Below is a list of the most important ones:

- The Equality Body records data annually on the complaints received and investigated and occasionally assigns to other parties the conducting of opinion surveys.<sup>142</sup> The Equality Body’s right to collect data is spelled out in the law setting out its mandate: Law on combating racial and other forms of discrimination

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<sup>139</sup> Constitution of the Republic of Cyprus 1960, Article 15, available at [www.cylaw.org/nomoi/enop/non-ind/syntagma/full.html](http://www.cylaw.org/nomoi/enop/non-ind/syntagma/full.html), accessed on 23 February 2016.

<sup>140</sup> Cyprus, Law ratifying the European Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data N. 28(III)/2001, 23 November 2001, available at [http://cylaw.org/nomoi/arith/2001\\_3\\_028.pdf](http://cylaw.org/nomoi/arith/2001_3_028.pdf).

<sup>141</sup> Cyprus, Processing of Personal Data (Protection of the Individual) Law No. 138(I)/2001, Articles 2, 5(1) (e), 6(2) (e). Available at [www.cylaw.org/nomoi/enop/ind/2001\\_1\\_138/section-sc2e09d944-1971-7d64-ccd4-104729332484.html](http://www.cylaw.org/nomoi/enop/ind/2001_1_138/section-sc2e09d944-1971-7d64-ccd4-104729332484.html).

<sup>142</sup> For more details, see the Equality Body’s website: <http://www.no-discrimination.ombudsman.gov.cy/ereynes/evalotes-omades-plythismoy>, accessed on 23 February 2016.

- (Commissioner 2004 No. 42(I)/2004), Article 44 of which provides for its right to 'carry out surveys and statistics on any matter within its mandate'.<sup>143</sup>
- The police collect data on racial incidents and racial crime<sup>144</sup> but there is no legislation or regulation governing this; the practice is policy-based and the data collected and manner of processing may change from time to time.
  - In education, the Ministry of Education collects data on violence in schools in general, including non-discrimination-related incidents.<sup>145</sup> In 2015 a new recording mechanism was set up by the ministry specifically for racial incidents in schools. A pilot programme was implemented in seven selected schools, with the intention of extend the implementation of this mechanism to other schools in 2016.<sup>146</sup> The ministry also records and publishes the number of children with disabilities attending special schools at the primary level.<sup>147</sup> There is no legislation or regulation governing these practices, which are all purely policy-based.
  - The population census carried out by the state statistical services records indirectly relevant data, such as immigration and nationality data, unemployment, religion, nationality of children attending schools etc. The collection and processing of all data handled by the state statistical service is governed by the Law on Statistics No. 15(I)/2000 which regulates the manner of collecting data and the underlying principles behind statistical practice and ethics.<sup>148</sup>
  - For the purposes of operating the quota system in favour of persons with disabilities in the public sector, a special database was set up listing the candidates who meet the criteria for appointment under the law establishing this system. The appointing body under the relevant legislation is under a duty to notify the competent authorities annually of the number of persons with disabilities hired in the preceding year and whether the percentages foreseen in the law have been met. The law regulating this procedure is the Law on hiring persons with disabilities in the wider public sector (Special Provisions) of 2009 No. 146(I)/2009.<sup>149</sup>
  - The Independent Authority for the investigation of complaints and allegations against the police records data on the complaints submitted to it against members of the police, some of which include complaints for discriminatory and racist conduct,<sup>150</sup> on the basis of the Law on the Police (Independent Authority for the investigation of complaints allegations against the Police) No. 9(I)/2006.<sup>151</sup>

<sup>143</sup> Cyprus, Law 42(I)/2004, available at [http://cyllaw.org/nomoi/enop/non-ind/2004\\_1\\_42/index.html](http://cyllaw.org/nomoi/enop/non-ind/2004_1_42/index.html), accessed on 23 February 2016.

<sup>144</sup> The data is published on the police website: [www.police.gov.cy/police/police.nsf/All/E7418C8F8C8D750CC2257E1B00395F0F/\\$file/Ratsismos%20Ellinika%202005-2014.pdf](http://www.police.gov.cy/police/police.nsf/All/E7418C8F8C8D750CC2257E1B00395F0F/$file/Ratsismos%20Ellinika%202005-2014.pdf), accessed 12 January 2016.

<sup>145</sup> For more details, see [http://www.moec.gov.cy/paratiritirio\\_via/](http://www.moec.gov.cy/paratiritirio_via/).

<sup>146</sup> For more details see [http://www.moec.gov.cy/agogi\\_ygeias/pdf/kodikas\\_symperiforas/kodikas\\_symperiforas\\_ratsismou.pdf](http://www.moec.gov.cy/agogi_ygeias/pdf/kodikas_symperiforas/kodikas_symperiforas_ratsismou.pdf).

<sup>147</sup> For more details, see [http://www.moec.gov.cy/dde/pdf/statistika\\_el.pdf](http://www.moec.gov.cy/dde/pdf/statistika_el.pdf).

<sup>148</sup> Cyprus, Law No. 15(I)/2000, 4 February 2000, available at [http://cyllaw.org/nomoi/arith/2000\\_1\\_15.pdf](http://cyllaw.org/nomoi/arith/2000_1_15.pdf).

<sup>149</sup> Cyprus, Law No. 146(I)/2009, 23 December 2009, Articles 4(1), 10(2), 10(3), available at [http://cyllaw.org/nomoi/arith/2009\\_1\\_146.pdf](http://cyllaw.org/nomoi/arith/2009_1_146.pdf).

<sup>150</sup> For more details, see the Authority's website: [http://www.iaiacap.gov.cy/iaiacap/iaiacap.nsf/DMLannualreports\\_gr/DMLannualreports\\_gr?OpenDocument](http://www.iaiacap.gov.cy/iaiacap/iaiacap.nsf/DMLannualreports_gr/DMLannualreports_gr?OpenDocument), accessed 14 January 2016.

<sup>151</sup> Cyprus, Law No. 9(I)/2006, available at [http://cyllaw.org/nomoi/enop/non-ind/2006\\_1\\_9/index.html](http://cyllaw.org/nomoi/enop/non-ind/2006_1_9/index.html).

| Consent          | Employment       | Health/life      | Public | Members          | Legal claim | Medicine | Public interest – Other |
|------------------|------------------|------------------|--------|------------------|-------------|----------|-------------------------|
| X <sup>152</sup> | X <sup>153</sup> | X <sup>154</sup> | X      | X <sup>155</sup> | X           | X        | X <sup>156</sup>        |

## 2. Definitions and categories used to collect equality data

Equality data are primarily collected on the basis of complaints submitted to a particular body with a mandate to investigate them (e.g. the Equality Body, the police or the Independent Authority for the investigation of complaints and allegations against the police). This type of systematic recording of complaints uses self-identification only to the extent that the complainant has identified him/herself in the complaint. The occasional and non-systematic surveys carried out by public or private bodies, such as the Equality Body, universities etc, record discrimination experiences of interviewees; if the interviewees are selected because they are members of a vulnerable group (e.g. religious or sexual minority) then self-identification may be used. Third-party categorisation, mutual recognition or proxies are not used as methods for defining categories. No consultation with the data subjects has ever been carried out in order to determine the most suitable categorisation or processing of data. The only relevant definition found in the legislative framework is that of “sensitive data” defined in the data protection law<sup>157</sup> and set out in section 1 above.

## 3. Practical implementation

### *Data systematically collected*

- The Equality Body relies on the complaints received, recording the number of complaints submitted, the number investigated in a given year, the ground of discrimination, the field of application, the complainant’s sex, the national or ethnic origin of the complainant and the geographical district where the complainant resides. It also records the outcome of the investigation but not in a binary form (either “well-founded” or “groundless” complaints). Instead it lists a number of categories where the outcome of the investigation is often mixed with the measure taken by the Equality Body, e.g. ‘submission of reports with recommendations’ or ‘invitation to stakeholders for consultation’ or ‘the complainant was notified’ without clarifying whether or not discrimination was established.<sup>158</sup> These data cover all grounds within the Equality Body’s mandate<sup>159</sup> and is recorded in the

<sup>152</sup> Provided the subject’s consent was given explicitly and was not extracted unlawfully or contrary to public morals.

<sup>153</sup> Provided the DPA also consents to the processing of the subject’s data.

<sup>154</sup> Provided the processing is carried out by health professionals who are subject to confidentiality rules.

<sup>155</sup> The organisation must have political, philosophical, religious or trade unionist aims and the data collected can only be revealed to third parties if the data subject consents.

<sup>156</sup> The precise term used by the law is “national needs” and national “security needs”.

<sup>157</sup> Cyprus, Processing of Personal Data (Protection of the Individual) Law No. 138(I)/2001, Article 2. Available at [www.cylaw.org/nomoi/enop/ind/2001\\_1\\_138/section-sc2e09d944-1971-7d64-ccd4-104729332484.html](http://www.cylaw.org/nomoi/enop/ind/2001_1_138/section-sc2e09d944-1971-7d64-ccd4-104729332484.html).

<sup>158</sup> See for instance the Report of the Anti-discrimination Authority for 2014, available at [http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/All/C7DFF67D3CAF7B5EC2257F14003F73A7/\\$file/1Book%20DIAKRISEON%202014%20GR%20Mech%20Electr%20Edition%20for%20web.pdf](http://www.ombudsman.gov.cy/Ombudsman/ombudsman.nsf/All/C7DFF67D3CAF7B5EC2257F14003F73A7/$file/1Book%20DIAKRISEON%202014%20GR%20Mech%20Electr%20Edition%20for%20web.pdf), last accessed 14 December 2016.

<sup>159</sup> The Cypriot Equality Body’s mandate covers race, community, language, colour, religion, political or other beliefs, national or ethnic origin, special needs, age and sexual orientation.

annual reports of the Equality Body, which are published on its website usually in December of the year following the year concerned.

- The racial incidents recorded by the police also rely on complaints submitted either to the police or to the Equality Body (which then notifies the police) or which the police was informed about from other sources. Although the title of this registry refers to 'racial incidents', the data actually include, in addition to racial or ethnic origin, the grounds of age, sexual orientation, political belief, religion, community, language, colour, gender and "special needs", a term often used in Cyprus to denote disability. The record for the period 2005-2014 is posted on the website of the police.<sup>160</sup>
- The racial incidents which the Ministry of Education started recording in 2015 on the basis of a recently set up monitoring mechanism relies on questionnaires completed by teachers and submitted by the school units which the teachers are attached to. The data collected by this mechanism concern racially motivated incidents. The Observatory on School Violence, which is also operated by the same ministry, collects data on violence irrespective of the motive, including homophobic, racial or religious violence. The ministry does not make these data available publicly and maintains discretion on whether to supply such data privately upon request.

#### *Surveys used in order to feed into EU-wide social surveys*

##### *a. Labour Force Survey<sup>161</sup>*

The Statistical Service of the Republic systematically collects data on labour conditions compiled under the general category of the Labour Force Survey (LFS). In Cyprus the Labour Force Survey was carried out for the first time in 1999 and was conducted in the second quarter of every year, but as of 2004 it turned into a continuous survey to comply with the relevant EU acquis. It covers a sample of 3,800 households in all districts of Cyprus, which are selected to be representative of the residents of urban and rural areas. For the purposes of EU comparability, the survey only covers private households and excludes people residing in collective households (i.e. institutions, homes for the elderly, hospitals, monasteries etc.), conscripts on compulsory military service, students who study abroad and Cypriots who work abroad. The collection of the data from the Statistical Service is done through personal interviews and the use of portable computers as well as through telephone interviews. The LFS aims to collect data useful for the formulation of policy on labour matters (employment and unemployment) and for pursuing and evaluating the programmes implemented both by Government and by the European Union, looking at the state of employment/unemployment by branch of economic activity, age, education, nationality, occupation, professional status, full/part time employment etc. The LFS Ad-Hoc Module Results: Migrants and Labour Market compiles data on access to the labour market by Cypriots, EU nationals other than Cypriots and third-country nationals, focusing particularly on reasons for migrating, linguistic characteristics, qualifications and methods used to find their current job.<sup>162</sup>

From an equality perspective, the data on the employment of people of different ages and nationalities would potentially be interesting, although the data included are insufficient to draw any equality-relevant conclusions or to inform equality policies.

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<sup>160</sup> For more details, see the website of the police:  
[http://www.police.gov.cy/police/police.nsf/All/E7418C8F8C8D750CC2257E1B00395F0F/\\$file/Ratsismos%20Ellinika%202005-2014.pdf](http://www.police.gov.cy/police/police.nsf/All/E7418C8F8C8D750CC2257E1B00395F0F/$file/Ratsismos%20Ellinika%202005-2014.pdf), accessed on 23 February 2016.

<sup>161</sup> The latest LFS are available at:  
[www.mof.gov.cy/mof/cystat/statistics.nsf/labour\\_31main\\_en/labour\\_31main\\_en?OpenForm&sub=1&sel=1](http://www.mof.gov.cy/mof/cystat/statistics.nsf/labour_31main_en/labour_31main_en?OpenForm&sub=1&sel=1), accessed on 17 March 2016.

<sup>162</sup> Statistical Service of the Republic of Cyprus, *The LFS Ad-Hoc Module Results: Migrants and Labour Market*, available at  
<http://www.mof.gov.cy/mof/cystat/statistics.nsf/All/0D7CF51AC24E441CC2257D9E003A95DB?OpenDocument&sub=1&sel=1&e=&print>, accessed on 17 March 2016.



b. European Social Survey (ESS)

This was traditionally conducted by a private university, the European University of Cyprus. However, since 2012 no ESS has been carried out in Cyprus due to lack of funding.

c. EU-SILC-Poverty and social exclusion<sup>163</sup>

Various surveys conducted by the state Statistical Service compile data on poverty and social exclusion which are used to feed into the EU-SILC surveys. These contain data on social protection, based on public, semi-public and private expenditure on old age benefits, disability benefits, health provisions, unemployment and housing benefits and other categories of social provisions. The survey on the living conditions and income of households records data on relevant poverty and identified the groups of the population at the highest risk of poverty, based on data for income distribution and quality of life.

Not all surveys were available online at the time of writing, but the Statistical Service provided them by email. These include a comparison between the Labour Force Survey 2014 and EU-SILC 2014 for labour force participation rates (%), the income gross variables at household and at personal level, a comparison of SILC income target variables and number of persons who receive income from each 'income component', with external sources.

*Non-systematic surveys conducted on a one-off basis*

Specific data collection initiatives follow the methodology prescribed by the body commissioning the research (often a combination of focus groups and interviews in the case of qualitative research) and telephone interviews or face-to-face structured questionnaires in the case of quantitative research. The Equality Body, which conducts opinion surveys on a non-systematic basis, commissions market research companies or universities to conduct opinion surveys which are carried out through telephone interviews or questionnaires.<sup>164</sup> These surveys tend to be publicised through the media.

Data that are not published may be made available upon request at the discretion of the body that maintains them; there is no law compelling any authority to publicise any data. The Statistical Service of the Republic has the right to access all archives and records of governmental departments as well as the right to require any person to supply data for the purpose of producing statistics.<sup>165</sup>

There are no court decisions which are relevant to equality data collection. A Supreme Court decision attempted an interpretation of "sensitive data" but, apart from the elements already mentioned in the law, the only additional element established was that a person's name constitutes sensitive data.<sup>166</sup>

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<sup>163</sup> The relevant national surveys are available at: [www.mof.gov.cy/mof/cystat/statistics.nsf/populationcondition\\_25main\\_gr/populationcondition\\_25main\\_gr?OpenForm&sub=5&sel=1](http://www.mof.gov.cy/mof/cystat/statistics.nsf/populationcondition_25main_gr/populationcondition_25main_gr?OpenForm&sub=5&sel=1), accessed on 17 March 2016.

<sup>164</sup> The surveys commissioned by the Equality Body are listed on its website: [www.no-discrimination.ombudsman.gov.cy/ereynes/evalotes-omades-plythismoy](http://www.no-discrimination.ombudsman.gov.cy/ereynes/evalotes-omades-plythismoy), accessed 14 January 2016.

<sup>165</sup> Cyprus, Law on statistical data No.15 (I)/2000, Articles 10, 11. Available at [http://cylaw.org/nomoi/enop/non-ind/2000\\_1\\_15/full.html](http://cylaw.org/nomoi/enop/non-ind/2000_1_15/full.html), accessed on 23 February 2016.

<sup>166</sup> Supreme Court of Cyprus, Review Jurisdiction, Yiannos Mikellides v. Republic of Cyprus through the Commissioner for the Protection of Personal Data, Case No. 1720/2010, 30 March 2012. Available at [http://cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros\\_4/2012/4-201203-1720-10.htm&qstring=%E5%F5%E1%E9%F3%E8%E7%F4%2A%20and%20%F0%F1%EF%F3%F9%F0%2A%20and%20%E4%E5%E4%EF%EC%E5%ED%2A](http://cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_4/2012/4-201203-1720-10.htm&qstring=%E5%F5%E1%E9%F3%E8%E7%F4%2A%20and%20%F0%F1%EF%F3%F9%F0%2A%20and%20%E4%E5%E4%EF%EC%E5%ED%2A) accessed on 23 February 2016.



#### 4. Key issues

Cyprus has little tradition of data collection, a concept which essentially entered the public domain with the accession of Cyprus to the EU. Few governmental bodies collect data, a task mostly left to the state statistical service and those bodies which are tasked with receiving and investigating complaints. At present, and in the absence of any other mechanism to record equality data, the practice of extracting data from complaints appears the only credible source of information in the field of equality. However, neither the Equality Body nor the police make full use of this resource.

The Equality Body, on the one hand, records data that vary according to the field of application – since each of the two authorities comprising the Equality Body (the Anti-Discrimination Authority and the Equality Authority) produce their own statistical record. Therefore each year a set of statistics is produced that relates to the employment field (which is the domain of the Equality Authority) and another set is produced which relates to fields beyond employment. Albeit disjointed, the record could still provide valuable insights into the discrimination situation, but significant gaps can be found in various fields, most notably in the processing of information as regards the outcome of investigations, which renders it almost impossible for the reader to conclude whether a complaint was well-founded or groundless.

On the other hand, the police record on racial incidents contains interesting data but only on the final page does the reader become aware that the incidents recorded are not exclusively racially motivated and that the entire spectrum of protected grounds is covered instead. However, the only information offered by ground is the number of incidents; no data show any characteristics of the victim or the perpetrator or the outcome of the investigation for each ground separately. But the most striking gap of the police statistics is the low number of incidents recorded, which suggests the existence of serious under-reporting and under-recording, a fact over which the Equality Body and international bodies have repeatedly expressed concern.<sup>167</sup>

Generally speaking, although the absence of comprehensive data on discrimination has been criticised by a number of international reports,<sup>168</sup> two aspects emerge as most problematic in spite of repeated criticisms over the years:

- the absence of any records on court decisions and the failure of the judiciary to develop an archiving system to facilitate the retrieval of discrimination-related decisions; and
- the fact that the Cypriot authorities continue to associate people with a specific group by relying on visible or linguistic characteristics or on presumption, a practice which was described by the Advisory Committee on the Framework Convention on National Minorities (FCNM) as infringing the right to free self-identification and being incompatible with the FCNM.<sup>169</sup> The reference is to Cypriot

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<sup>167</sup> The Advisory Committee on the FCNM criticised the police record for recording only eight cases of racist crime in 2013 and 13 in 2012, which are far lower than anecdotal evidence and estimates suggest: Advisory Committee on the Framework Convention for the Protection of National Minorities, Fourth Opinion on Cyprus adopted on 18 March 2015, published 2 November 2015. Available at: <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680483b48>, accessed on 14 January 2016.

<sup>168</sup> Council of Europe, ECRI Report on Cyprus, Fourth monitoring cycle, 31 May 2011. Available at: <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Cyprus/CYP-CbC-IV-2011-020-ENG.pdf>, accessed on 14 January 2016; Council of Europe, ECRI conclusions on the implementation of recommendations in respect of Cyprus subject to interim follow up, 19 March 2014, available at [www.coe.int/t/dghl/monitoring/ecri/country-by-country/cyprus/CYP-IFU-IV-2014-021-ENG.pdf](http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/cyprus/CYP-IFU-IV-2014-021-ENG.pdf), accessed on 23 February 2016.

<sup>169</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities, Fourth Opinion on Cyprus adopted on 18 March 2015, published 2 November 2015. Available at: <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680483b48>, accessed on 14 January 2016.

Roma who are, for policy and data collection purposes, regarded as part of the Turkish Cypriot community due to their common language and religion, without any consultation or free self-identification procedures.

## 6. Czech Republic

**Expert: Miroslav Dvořák**

### 1. Relevant legal framework

The Czech legal system does not provide for specific legal provisions for equality data collection; the legislation in place therefore does not explicitly set the rules for the systematic collection of equality data nor does it impose a basic methodological framework for their collection. The basic law regulating data collection, their processing and storage is the Law on the Protection of Personal Data (LPD).<sup>170</sup> Categories including the race, national or ethnic origin, health, sex life, religious, philosophical or political beliefs of the data subject<sup>171</sup> fall under the regime of special protection for so-called "sensitive data".<sup>172</sup> Czech legislation is therefore fully in accordance with Article 8.1 of Directive 95/46/EC. However, there are a few statutory exceptions to this strict regulation, for example, Article 9d of the LPD regulating compliance with the obligations in the field of employment, which provides an obligation for employers to undertake data collection with regard to the number of employees with disabilities and to record these data.

The Employment Act<sup>173</sup> (EA) introduced a new legal "mandatory share" as a specific form of state employment policy. It is based on the principle of positive discrimination and promotes employment for disabled people with medium to large employers. It establishes and enacts mandatory quotas, which the employers concerned must meet. The legal definition of Article 81, para. 1 of the EA stipulates that employers with more than 25 employees are obliged to employ people with disabilities – the mandatory ratio is 4% of the total number of employees. The LPD prefers this option, but it is not the only way to meet the obligation laid down by the LPD (although it was for some time).<sup>174</sup>

Other exceptions to the collection of sensitive data (beyond Articles 8.2 and 8.3 of the Directive) under the enabling provisions contained in Article 8.4 of Directive 95/46/EC,<sup>175</sup> have not been enacted in the Czech Republic. This means that, in addition to when sensitive data are processed with the informed consent of a natural person, the law allows the collection of sensitive data in extreme situations (in the case of emergency medical care or threats to public health) and further for the purpose of the operation of insurance systems, in order to ensure the application of legal claims in the prevention, investigation and detection of crime, the prosecution of criminal offences and the search for persons. Since the LPD entered into force, Article 9 has undergone relatively significant changes. The original text specifically covered only the processing of sensitive data based on explicit consent from the individual, the processing of data necessary for health protection or healthcare, the protection of life or the aversion of imminent serious

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<sup>170</sup> Czech Republic, Act no. 101/2000 Coll., on the Protection of Personal Data (*Zákon ze dne 4. dubna 2000 o ochraně osobních údajů*), date of adoption 4 April 2000, Articles 4, 9, 21, 44, 45 [www.uoou.cz/zakon-c-101-2000-sb-o-ochrane-osobnich-udaju-a-o-zmene-nekterych-zakonu-ve-zneni-ucinnem-od-1-ledna-2015/ds-3109/p1=3109](http://www.uoou.cz/zakon-c-101-2000-sb-o-ochrane-osobnich-udaju-a-o-zmene-nekterych-zakonu-ve-zneni-ucinnem-od-1-ledna-2015/ds-3109/p1=3109).

<sup>171</sup> The data subject is the individual to whom the personal information relates (see § 4d, LPD).

<sup>172</sup> Article 9 of the LPD expresses a basic principle of sensitive data processing, namely that sensitive data may be processed only with the express consent of the subject and without this consent only on the basis of situations predicted by the law (e.g. in order to preserve life and health, for the purposes of prosecuting criminal offences and searching for persons etc.).

<sup>173</sup> Czech Republic, Act no. 435/2004 Coll., on Employment (*Zákon ze dne 13. května 2004 o zaměstnanosti*), date of adoption 13 May 2004, [https://portal.mpsv.cz/sz/obecne/prav\\_predpisy/akt\\_zneni/ZOZ\\_PLATNE\\_ZNENI\\_OD\\_1.1.2016.PDF](https://portal.mpsv.cz/sz/obecne/prav_predpisy/akt_zneni/ZOZ_PLATNE_ZNENI_OD_1.1.2016.PDF).

<sup>174</sup> Besides the direct employment of persons with disabilities the law currently provides for three alternatives to this duty: a) purchasing products or services from employers employing more than 50% of employees with disabilities, b) procurement from entities employing persons with disabilities, c) payment to the state budget.

<sup>175</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

danger to property. The latest modification of this paragraph was made in 2007, which was supplemented by an exception which allowed for the processing of sensitive data in criminal investigations and the search for people.

Czech anti-discrimination legislation<sup>176</sup> does not lay down conditions for the collection of equality data in a predictive and clear way, despite the legitimate demand for the collection of statistical data for the purposes of identifying the extent of discrimination and in order to measure progress in terms of equal opportunities in the Czech Republic. Only in the last seven years have repeated surveys based on non-targeted (anonymous) data collection been carried out by national authorities (currently with the sole purpose of determining the extent of segregation of Roma pupils in so-called special schools).<sup>177</sup>,<sup>178</sup> While the targeted data are personal data (they relate to an individually identifiable person), non-targeted data are not personal data because it cannot be determined to which specific person they apply. Privacy protection under the LPD therefore applies only to targeted, non-anonymous data.

| Consent | Employment | Health/life | Public | Members | Legal claim | Medicine | Public interest – Other |
|---------|------------|-------------|--------|---------|-------------|----------|-------------------------|
| X       | X          | X           | X      | X       | X           | X        | X                       |

## 2. Definitions and categories used to collect equality data

Since the Czech Republic does not have legislation which would define the concept of equality data, there is no regulation of which definitions and categories should be applied for data collection. Furthermore, categories such as race or ethnic origin, health, sex life, or religious beliefs are explicitly categorised as “sensitive data”, therefore the norms governing their collection are very restrictive and targeted collection of such data is virtually impossible. Here it is also important to note that the Czech equality body (the Ombudsman) also does not have any mechanism by which it could collect targeted sensitive data.

The category of nationality is also very difficult to pin down in Czech legislation. In the 2011 Census the question of nationality was included among optional questions, although according to the Czech Anti-Discrimination Act “nationality”, in addition to race and ethnicity, is considered a ground of discrimination. The category of “nationality” takes on, in Czech law, yet another, purely subjective meaning. It follows from Article 3.2 of the Charter of Fundamental Rights and Freedoms<sup>179</sup> that everyone is guaranteed the freedom to choose his or her nationality. Czech legislation thus understands nationality as a matter of free choice, while the category of ethnic minority is based on criteria which do not depend on the individual’s choice. Unsurprisingly, in the 2011

<sup>176</sup> Czech Republic, *Zákon č. 198/2009 Sb. O rovném zacházení a o právních prostředcích ochrany před diskriminací a o změně některých zákonů (antidiskriminační zákon)*, (Law no. 198, 2009 Sb., on equal treatment and on legal means of protection against discrimination and amending certain laws (Antidiscrimination Act)), date of adoption 23 April 2009, [www.mpsv.cz/ppropo.php?ID=z198\\_2009](http://www.mpsv.cz/ppropo.php?ID=z198_2009).

<sup>177</sup> This was an obvious reaction to the judgement of the European Court of Human Rights in the case of D.H. and Others v. the Czech Republic (Application no. 57325/00), 13 November 2007, [http://hudoc.echr.coe.int/eng#{"fulltext":\["57325/00"\],"documentcollectionid2":\["GRANDCHAMBER"\],"CHAMBER":\[""\],"itemid":\["001-83256"\]}](http://hudoc.echr.coe.int/eng#{).

<sup>178</sup> Special education is designed for students with moderate and severe learning disabilities, multiple disabilities or autism. Students are enrolled in special schools at the request of their parents (or legal representative) and a written recommendation from the school counselling facility.

<sup>179</sup> Czech Republic, Law no. 2/1993 Coll., Charter of Fundamental Rights and Freedoms (*Listina základních práv a svobod*), date of adoption 16 December 1992, [www.psp.cz/docs/laws/listina.html](http://www.psp.cz/docs/laws/listina.html).

Census it was even possible to state two nationalities<sup>180</sup> simultaneously. Similarly unsurprising was that only 13,109 people<sup>181</sup> indicated Roma nationality, while estimates of the Roma population in the Czech Republic are between 150,000 and 300,000 persons.<sup>182</sup> Data on nationality based only on self-identification, without the accompanying determinants such as country of birth (migration background), mother tongue and others, are therefore very vague. The Czech Statistical Office disaggregates the majority of the data obtained on the basis of gender and age.<sup>183</sup> Selective surveys on the number of people with disabilities and the structure of this group are conducted by the Czech Statistical Office at intervals of five to six years.<sup>184</sup> An individual is considered to have a disability if his or her physical, sensory and/or intellectual abilities or mental health are different from what would be seen as typical and if it can be justifiably assumed that this condition will persist for more than one year. The difference from what would be considered typical must be of a type or range which usually causes a restriction to or factual disabling of the individual's self-fulfilment in society.<sup>185</sup>

The collection of data with regard to religious affiliation only takes place regularly during the Census, where a response on this topic is optional. In 2011, the respondent could either subscribe to a particular faith or could state 'believer - does not belong to any church or religious society'. Official data collection in the field of LGBTI is practically absent, as stated in the ECRI report on the Czech Republic from 2015;<sup>186</sup> the missing data are at least partially substituted in particular by large EU surveys, such as the Eurobarometer or FRA.<sup>187</sup>

### 3. Practical implementation

The Czech Statistical Office ([www.czso.cz](http://www.czso.cz)) collects, analyses and evaluates statistical data in the Czech Republic. The Czech Statistical Office also conducts data collection, analysis and evaluation of data within the European statistical surveys, e.g. the Labour Force Survey<sup>188</sup> and the Survey on Income and Living Conditions of households within the EU-SILC.<sup>189</sup> The LFS is processed once a quarter and the EU-SILC annually. The Czech Statistical Office publishes relevant statistical surveys and the results of the investigation, but the identity of respondents is subject to strict anonymity. The results of the survey can be accessed only by authorised employees of the Czech Statistical Office, who are bound to secrecy (more detail in the section on the methodology of

<sup>180</sup> In the Czech Republic the category of "nationality" is closer to the category of "national minority" than to "state citizenship".

<sup>181</sup> Czech Statistical Office, Population by age, nationality and gender, <https://vdb.czso.cz/vdbvo2/faces/cs/index.jsf?page=statistiky#katalog=30715>.

<sup>182</sup> Hlaváček, K. (2014): *Romové v České republice* [Roma in the Czech Republic], studie č. 5.341, Parlamentní institut, Praha.

<sup>183</sup> Czech Statistical Office, public database, Statistics: <https://vdb.czso.cz/vdbvo2/faces/cs/index.jsf?page=statistiky&filtr=G~F M~F Z~F R~F P~ S~ null null>.

<sup>184</sup> This is a survey completed, in particular, by doctors and social workers. The basis for completing the questionnaire is the medical records of selected patients (with disabilities). The actual questionnaire is anonymous, neither the name nor the patient's personal identification number (persons with disabilities) are stated.

<sup>185</sup> Compare the methodology of the survey: [www.czso.cz/documents/10180/20543019/metodicke\\_vysvetlivky\\_vspo13.pdf/6e73119a-a42d-44d7-9e2b-01eef7a30b9a?version=1.0](http://www.czso.cz/documents/10180/20543019/metodicke_vysvetlivky_vspo13.pdf/6e73119a-a42d-44d7-9e2b-01eef7a30b9a?version=1.0).

<sup>186</sup> ECRI report on the Czech Republic (fifth monitoring cycle), ECRI (2015)35, published on 13 October 2015, page 31.

<sup>187</sup> E.g.: European Commission, Brussels (2015): *Special Eurobarometer 437, Discrimination in the EU in 2015* or FRA – European Union Agency for Fundamental Rights, Vienna (2013): *European Union lesbian, gay, bisexual and transgender survey; Results at a glance*.

<sup>188</sup> Czech Statistical Office, Employment and Unemployment, available at: [www.czso.cz/csu/czso/employment-and-unemployment](http://www.czso.cz/csu/czso/employment-and-unemployment).

<sup>189</sup> Czech Statistical Office, Living conditions, Household Income and Expenditure, available at: [www.czso.cz/csu/czso/living\\_conditions\\_household\\_income\\_and\\_expenditure\\_stat](http://www.czso.cz/csu/czso/living_conditions_household_income_and_expenditure_stat).

investigation).<sup>190</sup> Within the LFS, equality data on age and gender are collected,<sup>191</sup> while within the EU-SILC, equality data are collected on age, sex, marital status and parenthood.<sup>192</sup> In addition, data on foreign origin and disability are included in the LFS ad hoc modules.

During the 2011 Census, for example, data on registered and de facto (legally formalised) partnerships of same-sex couples were collected and were further evaluated in conjunction with the characteristics of sex, age, educational level, childcare, nationality and religion.<sup>193</sup> The Czech Statistical Office conducts regular surveys of people with disabilities, in order to ascertain numbers and their gender, age, economic activity or whether they receive social benefits etc. The purpose of the research is to obtain relevant information as a basis for strategic decisions for the improvement of the living conditions of people with disabilities. Data on sexual orientation, race and ethnicity are not within the official national statistical surveys collected.

**The Public Defender of Rights (Ombudsman)** [www.ochrance.cz](http://www.ochrance.cz), as the equality body, implemented significant research into the ethnic composition of students of the so-called "special schools"<sup>194</sup>, the purpose of which was to obtain relevant data on Roma children placed in special and practical schools (designed for children with ADHD). This followed the judgment of the ECtHR in the case of *DH and others v. Czech Republic*.<sup>195</sup> The Ombudsman's surveys are largely one-off activities which are not carried out systematically for objective reasons, due to the lack of funding and related staffing capacities of the Ombudsman's office.

**The Ministry of Education, Youth and Sports**, through the Czech School Inspectorate, carries out regular surveys on the ethnicity of pupils in former special schools, using a method of identification based on indirect criteria (a survey among the heads of special and practical schools). For example, in 2010 the Czech School Inspectorate carried out a similar local investigation - a series of observations in 171 primary schools. The results of these studies became the basis of the strategic document published by the Ministry: *Action plan for inclusive education for the period 2016-2018*.<sup>196</sup>

**NGOs** collect data mainly internally, within the framework of the provision of services to individuals. Statistical data are published in their own annual reports, also for the purpose of influencing public policy. In 2007 the League of Human Rights formulated recommendations for the Czech Government on how to eliminate ethnic discrimination in primary education. This document included a draft methodology for collecting ethnic data.<sup>197</sup> An NGO called PROUD records unofficial statistics on registered partnerships.<sup>198</sup>

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<sup>190</sup> Available at: [www.czso.cz/documents/10180/23178400/zp\\_metodika\\_20150625\\_en.pdf/e39f7eab-e6f1-4142-8c5c-cfbd679756b9?version=1.1](http://www.czso.cz/documents/10180/23178400/zp_metodika_20150625_en.pdf/e39f7eab-e6f1-4142-8c5c-cfbd679756b9?version=1.1).

<sup>191</sup> Results of the LFS (Employment and Unemployment) available at: [www.czso.cz/csu/czso/zamestnanost-a-nezamestnanost-podle-vysledku-vsps-ctvrtletni-udaje-4-ctvrtleti-2015](http://www.czso.cz/csu/czso/zamestnanost-a-nezamestnanost-podle-vysledku-vsps-ctvrtletni-udaje-4-ctvrtleti-2015).

<sup>192</sup> Results of EU-SILC (Household Income and Living Conditions) available at: [www.czso.cz/csu/czso/household-income-and-living-conditions-2014](http://www.czso.cz/csu/czso/household-income-and-living-conditions-2014).

<sup>193</sup> Czech Statistical Office, *Registrované partnerství je častější u mužů*, available at: [www.czso.cz/csu/czso/0800492b9c](http://www.czso.cz/csu/czso/0800492b9c).

<sup>194</sup> Office of the Ombudsman (2012), *Výzkum etnického složení žáků bývalých zvláštních škol* [Study of the ethnicity of pupils at former special schools], available at: [www.ochrance.cz/fileadmin/user\\_upload/DISKRIMINACE/Vyzkum/Vyzkum\\_skoly-zprava.pdf](http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyzkum/Vyzkum_skoly-zprava.pdf).

<sup>195</sup> D.H. and others v. the Czech Republic (Application No. 57325/00), Judgement of the Grand Chamber of the ECtHR, 13 November 2007. Available at <http://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%2257325/00%22%5D,%22documentcollectionid%22:%5B%22GRANDCHAMBER%22,%22CHAMBER%22%5D,%22itemid%22:%5B%22001-83256%22%5D%7D>.

<sup>196</sup> The Ministry of Education (2015), *Akční plan inkluzivního vzdělávání na období 2016-2018* [Action plan for inclusive education for the period 2016-2018], available at: [www.msmt.cz/ministerstvo/novinar/akcni-plan-inkluzivniho-vzdelavani-na-obdobi-2016-2018](http://www.msmt.cz/ministerstvo/novinar/akcni-plan-inkluzivniho-vzdelavani-na-obdobi-2016-2018).

<sup>197</sup> League of Human Rights (2007), *Systémové doporučení Ligy No. 4 - Sběr dat určujících etnickou příslušnost jako nástroj pro zjištění rozměru diskriminace romských dětí* [System recommendations League no. 4 - datat collection as a tool to define the extent of discrimination against Roma children], available at:



**Universities and research institutes** play a relevant role in data collection, particularly through research. As an example, in 2009, sociologist Olga Pechová published a study on the topic of discrimination based on sexual orientation, on the basis of a questionnaire survey conducted amongst 496 homosexual and bisexual respondents.<sup>199</sup> An important element in the process of data collection is research conducted within the European Social Survey (ESS).<sup>200</sup> The Institute of Sociology of the Czech Academy of Sciences<sup>201</sup> performs the role of national infrastructure node within the ESS for the Czech Republic. Individual quantitative ESS surveys have been carried out every two years since 2002 (only the 3rd round of investigation was not undertaken in the Czech Republic). Surveys are based on looking at the values, attitudes, behaviour and socio-demographic and socio-structural characteristics of the population of the Czech Republic. Respondents aged 15 years and over are selected using stratified probability sampling and interviewed using standardised interviews with the help of commercial research agencies such as ppm factum research Ltd. or Median Ltd.

Concerning the **case law**, it is important to mention the evolution of the jurisprudence of the Czech courts, particularly in connection with the ECtHR judgment in *D.H. and others v. Czech Republic*.<sup>202</sup> The Supreme Court noted (judgement No. 30 Cdo 4277/2012)<sup>203</sup> that the statistical data are sufficient for the burden of proof to play a role in the reasoning of the Court, but in this case, the court did not treat the statistical data as prima facie evidence, because they showed 40% of pupils in special schools were Roma, and according to the current ECtHR case law, it is only such statistics where the proportion is above 50% that is sufficient to establish prima facie evidence, with reference to ECtHR judgment in *Oršuš and others v. Croatia* (Application no. 15766/03).<sup>204</sup> The Constitutional Court of the Czech Republic (No. II. US 1609/08),<sup>205</sup> also noted the admissibility and sufficiency of evidence based on statistical data for the plaintiff's burden of proof in matters of discrimination (in this case it was age discrimination, consisting of the termination of employment for alleged organisational reasons of an employee of the Office of Government who was over 50 years old).

#### 4. Key issues

The extent of equality data collection in the Czech Republic is very limited, piecemeal and lacks an adequate legal framework. A significant part of the political class regularly

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<http://lp.cz/2007/07/doporucni-vlade-ke-zlepseni-situace-v-oblasti-lidskych-prav/>.

<sup>198</sup> Platforma pro rovnoprávnost, uznání a diverzitu – PROUD (2015), *Počet registrovaných partnerství v ČR* [Number of registered partnerships in the Czech Republic], available at: <https://infoqr.am/pocet-registrovanых-partnerství-v-cr>.

<sup>199</sup> Pechová, O (2009), 'Diskriminace na základě sexuální orientace' [Discrimination based on sexual orientation], in *E-psychologie* [E psychology], 3/2009, available at: <http://e-psycholog.eu/pdf/pechova.pdf>.

<sup>200</sup> Documents and data files of the ESS in the Czech Republic can be found at: [www.europeansocialsurvey.org/data/country.html?c=czech-republic](http://www.europeansocialsurvey.org/data/country.html?c=czech-republic).

<sup>201</sup> More information about the Institute of Sociology of the Czech Academy of Sciences is available at: [www.soc.cas.cz/en](http://www.soc.cas.cz/en).

<sup>202</sup> *D.H. and Others v. the Czech Republic* (Application No. 57325/00), Judgement of the Grand Chamber of the ECtHR, 13 November 2007. Available at: <http://hudoc.echr.coe.int/eng#%7B%22fulltext%22%3A%2257325/00%22%2C%22documentcollectionid%22%3A%222GRANDCHAMBER%22%2C%22CHAMBER%22%2C%22itemid%22%3A%22001-83256%22%7D>.

<sup>203</sup> *J.S. v. Czech Republic, Ministry of Education, Youth and Sports*, judgement No. 30 Cdo 4277/2012, Supreme Court of the Czech Republic, 13 December 2012. Available at: [http://nsoud.cz/Judikatura/judikatura\\_ns.nsf/WebSearch/19B60A918249AF79C1257AFA0055D09F?openDocument&Highlight=0](http://nsoud.cz/Judikatura/judikatura_ns.nsf/WebSearch/19B60A918249AF79C1257AFA0055D09F?openDocument&Highlight=0).

<sup>204</sup> *Oršuš and others v. Croatia* (Application No. 15766/03), Judgement of the Grand Chamber of the ECtHR, 16 March 2010. Available at: <http://hudoc.echr.coe.int/eng#%7B%22dmdocnumber%22%3A%22864619%22%2C%22itemid%22%3A%22001-97689%22%7D>.

<sup>205</sup> *J.H. v. Czech Republic, Office of the Government of the Czech Republic*, judgement No. II. US 1609/08, Constitutional Court of the Czech Republic, 27 May 2009, available at: <http://nalus.usoud.cz/Search/ResultDetail.aspx?id=62527&pos=2&cnt=2&typ=result>.

questions the usefulness of anti-discrimination legislation,<sup>206</sup> the basic assumption being that measurement of the extent of discrimination, in order to acquire more efficient adjustments of equality policies and wider inclusion of the largest possible number of citizens into the core of social opportunities, is artificial and comes at the expense of the freedom of others. The lack of a stronger identification with the principles of equal opportunities is also criticised by some international organisations, such as the United Nations which noted the 'lack of reliable socioeconomic data on Ethnic Minorities and Non-Citizens, including statistics disaggregated by gender and national or ethnic origin, particularly in the areas of employment, housing, health services, social protection and education', and recommended that the Czech Republic in addition adopt all necessary measures 'to improve its data collection system, including the national census...'.<sup>207</sup>

In terms of comparative studies by the OECD,<sup>208</sup> the Czech Republic's education system has one the highest levels of social segregation, bringing together children from poor backgrounds in one school and children from affluent backgrounds in other schools, despite the fact that the Czech Republic has not yet launched a monitoring system for social and territorial disparities and their effects on the educational path of children. As an example of good practice, we could highlight the Ombudsman (equality body), who made use of the somewhat vague statutory provision that allows the office to 'conduct research' on the right to equal treatment<sup>209</sup> and undertook research into the ethnic composition of pupils in former special schools. The purpose of the research was to obtain relevant data on Roma children placed in special and practical schools (designed for children with ADHD), following the judgment of the ECtHR in the case of *DH and others v. Czech Republic*. The research was conducted in 67 former special schools using an observational methodology and third-party identification on the basis of indirect criteria.<sup>210</sup> The research was able to back up an assumption of a persistent tendency of discrimination against Roma children in access to education; their presence in former special schools amounted to 32-35%.<sup>211</sup> It was a one-off survey which has not been repeated since.

In 2014, the Ombudsman carried out extensive research on the phenomenon of discrimination under-reporting, in connection with the findings published in a research study by EU-MIDIS from 2009.<sup>212</sup> The research methodology was based on field surveys (standardised interviews with 2,079 respondents, including 51 in-depth interviews with members of groups characterised by the protected grounds) and on the analysis of the activities of actors involved in the enforcement of the right to equal treatment (NGOs, courts and state inspection bodies).

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<sup>206</sup> See, for example, the accompanying resolution to the Senate no. 377 of 23 April 2008: 'The Senate considers the adoption of the Antidiscrimination law as an instrument for the implementation of the requirements of European law, failure to do so may result in the Czech Republic being penalised. However, the Senate does not identify with the character of the regulation, which artificially extends the natural evolution of society and does not respect the cultural differences of the Member States and ultimately elevates the requirement of equality above the principle of freedom of choice. The Senate urges the Government not to approve the adoption of further anti-discrimination laws at EU level.'

<sup>207</sup> United Nations Committee on the Elimination of Racial Discrimination: Concluding observations on the combined tenth and eleventh periodic reports of the Czech Republic, 25 September 15, CERD/C/CZE/CO/10-11, body 5 a 6.

<sup>208</sup> OECD (2012), *Equity and quality in Education: Supporting disadvantaged students and schools*, OECD Publishing, [www.csicr.cz/getattachment/0f06a478-efa4-45b1-9abd-42f7c6109dfa](http://www.csicr.cz/getattachment/0f06a478-efa4-45b1-9abd-42f7c6109dfa)

<sup>209</sup> Compare Art. 21bb, Act no. 349/1999 Coll., on the Ombudsman, see [www.ochrance.cz/zakon-o-verejnem-ochranci-prav/](http://www.ochrance.cz/zakon-o-verejnem-ochranci-prav/)

<sup>210</sup> Office of the Ombudsman (2012), *Popis metody a výsledky výzkumu etnického složení žáků bývalých zvláštních škol v ČR v roce 2011/2012* [Description of the methods and results of research into the ethnic composition of pupils at former special schools in the Czech Republic], pages 14-15. Available at: [www.ochrance.cz/fileadmin/user\\_upload/DISKRIMINACE/Vyzkum/Vyzkum\\_skoly-metoda.pdf](http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyzkum/Vyzkum_skoly-metoda.pdf).

<sup>211</sup> Ibid., p. 20. The proportion of Roma in the total population of the Czech Republic is estimated at 2% -2.5%.

<sup>212</sup> Office of the Ombudsman (2015), *Diskriminace v ČR: oběť diskriminace a její překážky v přístupu ke spravedlnosti. Závěrečná zpráva z výzkumu veřejné ochránky práv* [Discrimination in the Czech Republic. Victims of discrimination and barriers to access to justice. Final report by the Ombudsman], available at: [http://spolecne.ochrance.cz/fileadmin/user\\_upload/projekt\\_ESF/Konference\\_diskriminace/diskriminace\\_CE\\_upravena.pdf](http://spolecne.ochrance.cz/fileadmin/user_upload/projekt_ESF/Konference_diskriminace/diskriminace_CE_upravena.pdf).



These activities of the Ombudsman are, however, conditional on many factors, firstly on a certain level of funds, but also the institution needs to have a sufficient number of qualified staff. The Czech equality body does not have sufficient financial and human resources for the systematic collection of data.

For a long time now (the last 15 years) NGOs have sought to promote and encourage the collection of equality data by state institutions, but these efforts are constantly met with unwillingness and rejection. As an example of bad practice, it is useful to look at the activity of the NGO, the Czech Helsinki Committee, which relates to the collection of ethnic data on prisoners. In 2003 the Czech Helsinki Committee developed a research methodology on the ethnicity of prisoners and conducted pilot study, the aim of which was to test the hypothesis according to which the Roma account for more than 30% of the prison population. The research methodology was based on the simultaneous use of methods of self-identification, identification by a third party on the basis of observations by researchers and identification by a third party on the basis of observation by employees of the Prison Service. The implementation of the research was rejected by the Prison Service in 2004.<sup>213</sup>

An example of good practice in equality data collection (especially ethnic data) is a research agency, Gabal Analysis and Consulting, requested by the Office of the Government of the Czech Republic. The aim was to obtain a qualified overview of the situation in the "socially excluded localities" (inhabited mainly by Roma). In 2005 and 2014 Gabal Analysis and Consulting ([www.gac.cz](http://www.gac.cz)) carried out research, commissioned by the Government Office, which resulted in a comprehensive analysis of the issues of social exclusion in the Czech Republic. The research was (in addition to many another methods) based on field surveys conducted in 2014 in 205 municipalities.<sup>214</sup> The research from 2014 became the fundamental starting point for the formulation of government policy materials and equality planning: the Strategy on Roma Integration for the Years 2015-2020.<sup>215</sup>

Lack of systematic and relevant equality data represents not only an obstacle in the adoption of adequate efficient public policy on equality but, in the circumstances of the Czech Republic, also eliminates the obtaining of factual evidence on the extent and patterns of discrimination, which is much needed to reinforce the seriousness of the issue of inequality mainly on the Czech political agenda.

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<sup>213</sup> Available at: [www.jirkoc.cz/projekty/prehled.htm](http://www.jirkoc.cz/projekty/prehled.htm); Gabal, I, Víšek, P (2006), *Východiska strategie boje proti sociálnímu vyloučení* [Fundamental strategy to combat social exclusion], p. 17, footnote No. 40, available at [www.gac.cz/userfiles/File/nase\\_prace\\_vystupy/GAC\\_Strategie\\_soc\\_vyloucení.pdf](http://www.gac.cz/userfiles/File/nase_prace_vystupy/GAC_Strategie_soc_vyloucení.pdf).

<sup>214</sup> GAC (2015), *Analýza sociálně vyloučených lokalit v ČR* [Analysis of socially excluded localities in the Czech Republic], available at: [www.gac.cz/userfiles/File/nase\\_prace\\_vystupy/Analýza\\_socialne\\_vyloucených\\_lokalit\\_GAC.pdf](http://www.gac.cz/userfiles/File/nase_prace_vystupy/Analýza_socialne_vyloucených_lokalit_GAC.pdf).

<sup>215</sup> Available at: [www.vlada.cz/cz/clenove-vlady/pri-uradu-vlady/jiri-dienstbier/aktualne/vlada-schvalila-strategii-romske-integrace-do-roku-2020-126945/](http://www.vlada.cz/cz/clenove-vlady/pri-uradu-vlady/jiri-dienstbier/aktualne/vlada-schvalila-strategii-romske-integrace-do-roku-2020-126945/).

## 7. Denmark

**Experts: Martin Bak Jorgensen and Ruth Emerek**

### 1. Relevant legal framework

There is no law which requires the collection of equality data. Statistics Denmark (DST), which was established in 1850,<sup>216</sup> is the central authority for official Danish statistics and is part of the Ministry of Social Affairs and the Interior.<sup>217</sup> DST has to collect process and publish statistical information on social conditions, can assist committees and commissions in statistical questions, make statistical analyses and forecasts, and collect statistics through international statistical collaboration. Furthermore, DST provides statistical information for use by the government administration and the legislature. If a public authority or institution intends to begin the collection and processing of statistical information, DST must be notified. Although DST has by law the obligation 'to collect, process and publish statistics on social conditions', this act (or previous acts) does not mention any obligation for DST to collect equality data. Furthermore, DST does not collect sensitive data, and the strategy plan for DST does not include statistics on equality as a goal.<sup>218</sup>

The Danish law on the processing of personal data totally or partly by means of electronic data processing, or personal data later included in a register,<sup>219</sup> directly states that sensitive data, including a person's racial or ethnic origin, religious or philosophical belief, health and sex life cannot in general be processed (stk. 1).<sup>220</sup> However, exemptions exist: where the data subject has given his/her explicit consent to the processing of such data; where processing is necessary to protect the vital interests of the data subject or of another person where the person concerned is physically or legally incapable of giving consent; where the processing relates to data which have been made public by the data subject; or the processing is necessary for the establishment, exercise or defence of legal claims.<sup>221</sup>

If the data subject has given his/her explicit consent, processing may be carried out in the course of its legitimate activities by a foundation, association or any other non-profit-seeking body with a political, philosophical, religious or trade union aim of the data relating to the members of the body or to persons who have regular contact with it in connection with its purposes.<sup>222</sup> The provision laid down in stk. 1 does not apply where processing of the data is required for the purposes of preventive medicine, medical diagnosis, the provision of care or treatment or the management of healthcare services, or where those data are processed by a health professional, subject under law to the obligation of professional secrecy.<sup>223</sup> Processing of the data mentioned in stk. 1 may take place where the processing is required for the performance by a public authority of its tasks in the area of criminal law.<sup>224</sup> Finally, there is also a possibility of processing sensitive data due to substantial public interests.<sup>225</sup> The supervisory authority, the Danish Data Protection Agency (*Datatilsynet-DPA*), must give its authorisation in such

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<sup>216</sup> Statistics Denmark's website: [www.dst.dk/da/OmDS/strategi-og-kvalitet/historie](http://www.dst.dk/da/OmDS/strategi-og-kvalitet/historie). Accessed 11 January 2016.

<sup>217</sup> Danmarks Statistik (2006), *Lovsamling om Statistik* [www.danmarksstatistik.dk/Site/Dst/Udgivelser/GetPubFile.aspx?id=10035&sid=lovsam2006](http://www.danmarksstatistik.dk/Site/Dst/Udgivelser/GetPubFile.aspx?id=10035&sid=lovsam2006).

<sup>218</sup> Statistics Denmark (2009): *STRATEGY 2015 - Objectives and frameworks for the development of statistics*. København.

<sup>219</sup> Denmark, Act 429, Act on Processing of Personal Data (*Persondataloven*).

<sup>220</sup> Denmark, Act 429, Act on Processing of Personal Data (*Persondataloven*), §7 stk.1.

<sup>221</sup> Denmark, Act 429, Act on Processing of Personal Data (*Persondataloven*), §7 stk.2.

<sup>222</sup> Denmark, Act 429, Act on Processing of Personal Data (*Persondataloven*), §7 stk.4.

<sup>223</sup> Denmark, Act 429, Act on Processing of Personal Data (*Persondataloven*), §7 stk.5.

<sup>224</sup> Denmark, Act 429, Act on Processing of Personal Data (*Persondataloven*), §7, stk. 6.

<sup>225</sup> Denmark, Act 429, Act on Processing of Personal Data (*Persondataloven*), §7, stk. 7: 'where the processing of data takes place for reasons of substantial public interests. The supervisory authority shall give its authorisation in such cases'.

cases.<sup>226</sup>, <sup>227</sup> This in fact means that although the law directly prohibits the collection of equality data for monitoring the development of discrimination or equality in the various areas mentioned above, through the exemptions it is made explicitly clear that this is allowed in the case of substantial public interest.

Thus Denmark prohibits the processing of personal data revealing 'racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership and the processing of data concerning health or sex life' (the definition of special data in Danish law), as described in Article 8.1 of the Data Protection Directive 95/46/EC.<sup>228</sup> Although Denmark has exemptions for all grounds of discrimination for reasons of substantial public interest,<sup>229</sup> the DPA needs to give permission for the processing of equality data in such cases, thus acting as a safeguard.<sup>230</sup> However, substantial public interest has not yet been defined.

| Consent | Employment | Health/life | Public | Members               | Legal claim | Medicine | Public interest – Other |
|---------|------------|-------------|--------|-----------------------|-------------|----------|-------------------------|
| X       | X          | X           | X      | (X)<br><sup>231</sup> | X           | X        | X                       |

## 2. Definitions and categories used to collect equality data

Data on religious or philosophical belief and sexual orientation or personal characteristics, such as disability, race and ethnicity, are not available. This kind of information is only available in surveys and, as stated by a representative from DST (head of section, population division) the above-mentioned data could not be provided as they do not primarily relate to government statistics.<sup>232</sup>

Data from DST can be disaggregated by age and gender, but not by disability, as Denmark does not register disability as such – only if the person receives an early retirement pension (due to limitations to working capacity) or disability supplement. Similarly, data cannot be disaggregated by ethnic or racial origin, unless proxies such as country of origin and citizenship are used, nor by sexual orientation, although DST does publish data on registered or married same-sex partners. Finally, data cannot be disaggregated by religious belief, except regarding belonging to the Danish Evangelical Lutheran Church.

Proxies for ethnic and racial origin are defined in Denmark by DST as follows (DST notes that no other countries use the same definitions, which makes comparison with other countries difficult):

<sup>226</sup> The DPA is the governmental authority which oversees the Act on the Processing of Personal Data. The authority consists of a Council and a Secretariat. The Secretariat employs around 35 staff who carry out the DPA day-to-day operations under the leadership of a Director.

<sup>227</sup> See [www.datatilsynet.dk/english/the-danish-data-protection-agency/introduction-to-the-danish-data-protection-agency/](http://www.datatilsynet.dk/english/the-danish-data-protection-agency/introduction-to-the-danish-data-protection-agency/).

<sup>228</sup> Denmark, Act 429, Act on Processing of Personal Data (*Persondataloven*), §7 stk.1.

<sup>229</sup> Denmark, Act 429, Act on Processing of Personal Data (*Persondataloven*), §7 stk.7.

<sup>230</sup> The DPA website: [www.datatilsynet.dk/english/the-danish-data-protection-agency/introduction-to-the-danish-data-protection-agency/](http://www.datatilsynet.dk/english/the-danish-data-protection-agency/introduction-to-the-danish-data-protection-agency/). Accessed 11 January 2016.

<sup>231</sup> Only with the consent of the data subject.

<sup>232</sup> EC (2008), *The fight against discrimination and the promotion of equality. How to measure progress done*. <http://ec.europa.eu/social/main.jsp?catId=618&langId=en>.

- Immigrant: an immigrant is defined as a person born abroad whose parents are both (or one of them if there is no available information on the other parent) foreign citizens or were both born abroad. If there is no available information on either of the parents and the person was born abroad, the person is also defined as an immigrant.
- Descendant: a descendant is defined as a person born in Denmark whose parents (or one of them if there is no available information on the other parent) are either immigrants or descendants with foreign citizenship. If there is no available information on either of the parents and the person in question is a foreign citizen, the person is also defined as a descendant.
- Person of Danish origin: a person – regardless of place of birth – who has at least one parent who is a Danish citizen and was also born in Denmark.

Country of origin is defined as follows:

- When no information about the parents is known, the country of origin is defined on the basis of the person's own information. If the person is an immigrant, it is assumed that the country of origin is the same as the country of birth. If the person is a descendant, it is assumed that the country of origin is the same as the country of citizenship.
- When information is known only about one parent, the country of origin is defined as the parent's country of birth. If this is Denmark, the country of citizenship is used.
- When information is known about both parents, the country of origin is defined as the mother's country of birth or country of citizenship. (Statistics Denmark: Documentation of statistics for immigrants and descendants 2016)<sup>233</sup>

### 3. Practical implementation

Statistics Denmark bases its main collection of person data on the personal identification number (PNR), as everyone who is legally living in Denmark has a personal identification number which follows them from cradle to grave – or from the first time the person immigrates to Denmark until such time as they ultimately emigrate again.<sup>234</sup> This is in line with the Data Protection Directive 95/46/EC Article 8.7.<sup>235</sup>

The PNR was introduced as a consequence of the establishment of the Danish Civil Registration System (*Det Centrale Personregister, CPR*) by law in 1968.<sup>236, 237</sup> The CPR registers a person's PNR, the PNR of their parents and children, the person's age, name, address, marital status, the PNR of their spouse, their family ID, place of birth, country of origin, citizenship, whether they are a member of the State Church (*Folkekirken*), and data on dates of immigration and emigration and the country from which the person immigrated or to which they emigrated. As a consequence, the last census in Denmark was run in 1970, and since then data from the registers has replaced the census. Thus DST has data and publishes data, e.g. on same-sex marriage and legally recognised partnerships, but sensitive data, such as a person's racial or ethnic origin, religious

<sup>233</sup> Available at: [www.dst.dk/en/Statistik/dokumentation/documentationofstatistics/immigrants-and-descendants/comparability](http://www.dst.dk/en/Statistik/dokumentation/documentationofstatistics/immigrants-and-descendants/comparability).

<sup>234</sup> LBK nr 5 af 09/01/2013 Gældende (CPR-Loven).

<sup>235</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

<sup>236</sup> Nielsen H (1991), *COR – Danmarks Folkeregister* [Denmark's population register], CPR-Kontoret, April 1991, <https://cpr.dk/media/166397/cpr%20-%20danmarks%20folkeregister.pdf>.

<sup>237</sup> The 10-digit personal identification number (PNR) is based on the person's date of birth (the first six digits), followed by four digits which are specific to the individual, and where an odd number indicates that the person is male and an even number that they are female. Thus there is no room to indicate an intersex person.

belief, health and sexual orientation, are not included in the registers.<sup>238</sup> There is no evidence of data collection on intersex people.

The PNR is the key to a series of information on the individual. Data from the CPR, with the PNR as the key, can be combined with data on an individual level from various other registers, such as education (from the registers on education) or workplaces (from the integrated database for the labour market) etc. Some data are registered by date (for instance, birth), some data are registered on a weekly basis (for instance, unemployment) and others on an annual basis (for instance, workplace information about the individual).

As the collection by DST is register-based, many types of data needed for processing equality data are in fact collected, and quite a few of these data are accessible in tables and free of charge from DST's online database, *Statistikbanken*.<sup>239</sup> However, the proxies and operationalisation of the various concepts may be debated as to whether they are valid variables for the concepts. Data from registers are compatible with similar data from registers in other countries, e.g. Sweden.

Access (given on an individual basis) to analysis of register data from DST can be granted to researchers and analysts from Danish research environments pre-approved and authorised by DST, and authorisations can be granted to Danish public research and analysis environments e.g. ministries. Thus some equality data can be accessed if and when needed. The fee for access depends on the amount of data and the number of registers which have to be accessed.

With regard to equality data specifically, current practice is that no such equality data are published (except for facts on gender equality). No sensitive data are collected by official authorities, although this would be possible due to the exemptions contained in the Act on Processing of Personal Data.

Statistics Denmark produces the Danish Labour Force Survey (LFS), which gives a description of the labour market status of the Danish population. This description includes a classification of people into employed, unemployed or outside the labour force (economically inactive). Furthermore, the survey provides detailed data on, for example, hours worked, conditions of employment, job search and participation in courses and other education e.g. in-service training or school courses. The Danish LFS has been produced yearly since 1984 and, from 1994, the survey has been produced continuously throughout the year. As the Danish LFS follows common European concepts and guidelines, it is the best Danish survey for international comparisons on labour market statistics. Data are delivered quarterly to the European statistical office, Eurostat.<sup>240</sup> Results from the Danish LFS are published in the news release, *Nyt fra Danmarks Statistik* (News from Statistics Denmark), and data are also available from Statistikbanken.<sup>241</sup> However, the LFS does not include equality data except gender and age.

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<sup>238</sup> Statistics Denmark: *CPR-oplysninger*, [www.danmarksstatistik.dk/da/Statistik/dokumentation/Times/cpr-oplysninger](http://www.danmarksstatistik.dk/da/Statistik/dokumentation/Times/cpr-oplysninger). Accessed 11 January 2016.

<sup>239</sup> Statistikbanken is accessible in Danish and English at: [www.statistikbanken.dk/statbank5a/default.asp?w=1088](http://www.statistikbanken.dk/statbank5a/default.asp?w=1088). Accessed 11 January 2016.

<sup>240</sup> The LFS is quarterly, based on a stratified sample of 40,532 individuals, with people aged 15 to 74 years drawn from administrative registers. The interviews are conducted by telephone. Every respondent is interviewed about one specific reference week and the interviews are conducted daily all year round. Respondents are surveyed four times: For the first two quarters in a row and, after a break for two quarters, the respondents are interviewed again for two quarters in a row. The sample is weighted to measure the entire population in Denmark accounting for e.g. gender, age, registered unemployment and income.

<sup>241</sup> [www.dst.dk/en/Statistik/dokumentation/documentationofstatistics/labour-force-survey](http://www.dst.dk/en/Statistik/dokumentation/documentationofstatistics/labour-force-survey).

Denmark participates in the European Social Survey and has taken part in all rounds since 2002. In Denmark it is represented by a coordinator from the Danish National Center for Social Research (SFI).<sup>242</sup> In Denmark the data collection is done through computer-assisted personal interviewing (CAPI), where the survey questions have been adjusted to the Danish context. It is a representative sample of everyone one aged 15 and over. The data compiled for the ESS comprise topics such as social position, experiences of discrimination and quality of life.

Furthermore, since 2003 Statistics Denmark has produced results from surveys on indicators of welfare to provide a statistical picture of the population's living conditions and risk of social exclusion. Similar surveys have been produced in all EU Member States since 2005, following the same guidelines. However, the Danish statistics on welfare indicators are just a small part of the EU-SILC. The interview part of the survey includes information on household composition and living conditions, with questions on how easy it is for the household 'to make ends meet' and the financial burden of housing costs. Further information is collected on health conditions and position on the labour market, etc. The interview questions are supplemented by register-based information, mainly on incomes and demographics. Statistics Denmark stresses that, where register-based information is available, it should normally be used instead of the SILC information.<sup>243</sup> The data can be compared over time and between countries participating in the EU-SILC without problems arising. Some main figures are published in *Nyt fra Danmarks Statistik* (News from Statistics Denmark) and data are also available from Statistikbanken. However, the welfare indicators do not include equality data except gender and age.<sup>244</sup>

The only systematic data collected in Denmark on discrimination experiences based on ethnicity are data on self-perceived discrimination of ethnic minority members collected through the Integration Barometer. The Social-Democrat-led government launched the 'National Integration Barometer' in late 2012 to monitor the progress of integration.<sup>245</sup> It is an instrument designed to measure integration according to nine specific goals (employment, education, equal treatment etc.). The data for the different indicators come from DST and a Danish education database, as well as surveys.<sup>246</sup> The intention was to have yearly updates to enable progress to be monitored, but data can be delayed for 1½ years before they are accessible through the Barometer. There is no time-limit for this initiative. It was not decided by law but is a tool designed by the former Ministry of Social Affairs and Integration. It focuses on ethnic minorities and uses the DST definitions.<sup>247</sup> It is thought to be an instrument for smaller municipalities, in particular. These often do not have well-developed local-level integration policies and the data from the Integration Barometer may be the only means to measure progress, whereas municipalities with more comprehensive policy frameworks may have developed additional measures, such as in Copenhagen and Aarhus.<sup>248</sup> The measures are only informative, however, and no results have yet been derived from the individual outcomes, although it is stated that active measures should be put in place if the outcomes of the different goals are assessed to be unsatisfactory.

<sup>242</sup> [www.europeansocialsurvey.org/about/country/denmark/ess\\_denmark.html](http://www.europeansocialsurvey.org/about/country/denmark/ess_denmark.html).

<sup>243</sup> The interview questions are only answered by one adult in each household. It is assumed that the answer on, say, the ability to make ends meet will be valid for all household members. The sample size is about 12,000 households, of which about 5,500 participate. Except for the sampling error, no other special error issues are relevant for the data published in Denmark.

<sup>244</sup> [www.dst.dk/en/Statistik/dokumentation/documentationofstatistics/welfare-indicators](http://www.dst.dk/en/Statistik/dokumentation/documentationofstatistics/welfare-indicators). Accessed 11 April 2017.

<sup>245</sup> [www.integrationsbarometer.dk/](http://www.integrationsbarometer.dk/).

<http://integrationsbarometer.dk/det-nationale-integrationsbarometer/indikatorer>; [www.nyidanmark.dk/bibliotek/publikationer/vejledninger/2004/Introduktionsprogrammet\\_mv\\_efter\\_integrationsloven/html/chapter08.htm](http://www.nyidanmark.dk/bibliotek/publikationer/vejledninger/2004/Introduktionsprogrammet_mv_efter_integrationsloven/html/chapter08.htm); the Danish education database is operated by the Ministry of Immigration, Integration and Housing.

<sup>247</sup> [www.dst.dk/en/Statistik/dokumentation/documentationofstatistics/immigrants-and-descendants/comparability](http://www.dst.dk/en/Statistik/dokumentation/documentationofstatistics/immigrants-and-descendants/comparability).

<sup>248</sup> Jørgensen, M. B. (2014), *Decentralising immigrant integration: Denmark's mainstreaming initiatives in employment, education, and social affairs*. Brussels: Migration Policy Institute Europe.



The Integration Barometer monitors the discrimination experience of ethnic minorities.<sup>249</sup> The Danish municipalities, for their part, have access to data from local integration barometers (containing six of the goals).<sup>250</sup>

The results of discrimination experience analysed through the national and local integration barometers are available to the public. The data are taken from DST twice a year and some variables (equal treatment; autonomy) are based on survey data. The latter can be 1½ years old.<sup>251</sup>

#### 4. Key issues

The Danish register data could be used for processing equality data, as information in the registers can be disaggregated by age and various proxies, e.g. ethnicity. However, the problem is that little emphasis is given to issues of equality (except for gender equality) by the relevant Danish authorities. This is shown, for instance, in the limited attention given to issues of discrimination.

The Ministry of Equality (Ministry for Children, Education and Gender Equality) has the responsibility for developing and coordinating the government's equality policy – concerning gender equality. However, various ministries have responsibility for equality policy within their policy areas. Nevertheless, there is more concern in Denmark about gender equality in the law rather than substantive equality.<sup>252</sup> There is apparently no official responsibility for equality in general.

There is currently little political support for the idea that Denmark might need additional, non-legislative or policy measures, as there is little recognition that discrimination is a problem in the country and therefore differences in various forms do not matter. This position obviously influences the measures taken pertaining to data collection. To substantiate this claim an example could be to look at the government Action Plan for Equal Treatment from 2010,<sup>253</sup> which is the latest and currently effective action plan on equal treatment. The Action Plan obviously has to deal with discrimination (based on ethnic origin) but it does so through a discussion about the difficulties in mapping and measuring discrimination. This would seem to call for new measures pertaining to data collection, however, the Action Plan ends up discussing discrimination as a methodological rather than a societal problem. There have been no reviews of the Action Plan so far and no calls to implement any in the near future either. Nor have there been any plans to replace the Action Plan with a new one.

There have also been no public debates regarding the collection of equality data; there is simply little focus on issues of inequality.

The Danish Institute for Human Rights (DIHR) conducts research on different grounds of discrimination and has a good reputation for producing reliable and valid research. However, most of this would be characterised as policy and/or legal analysis and, as such, does not contribute to producing equality data at national level but rather serves to provide a research base for raising awareness of discrimination and rights. Having the DIHR producing equality data could put more emphasis on the overall issue of equality data.

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<sup>249</sup> <http://integrationsbarometer.dk/de-9-mal#.UXqEgndLcTA>.

<sup>250</sup> See Jørgensen, M. B. (2014), *Decentralising immigrant integration: Denmark's mainstreaming initiatives in employment, education, and social affairs*. Brussels: Migration Policy Institute Europe.

<sup>251</sup> *Det Nationale Integrationsbarometer* [The National Integration Barometer] <http://integrationsbarometer.dk/>.

<sup>252</sup> The Ministry for Equality is now included in the Ministry for Children, Education and Gender Equality <http://eng.uvm.dk/>.

<sup>253</sup> Regeringen (2010), *Handlingsplan om etnisk ligebehandling og respekt for den enkelte* [Action Plan on Ethnic Equality and Respect for the Individual]. July 2010. København.

One example of best practice which is worth mentioning provides a good example of a focused case study collecting and processing equality data. This was a study to map discrimination on the private housing market. The results were published in the report, *The scope of unequal treatment of new-Danes*.<sup>254</sup> It was commissioned by the Anti-discrimination Unit (EFA). The mapping is a field experimental study on the rental housing market and illustrates a good example of data collection on discrimination. The report examines whether applicants for rental housing on the private housing market with an ordinary Middle Eastern-sounding name face more difficulties in finding housing in Denmark than applicants with an ordinary Danish-sounding name. Methodologically, the mapping study is based on data from a larger controlled and randomised traditional field experiment, carried out on a larger web-based portal for rental housing in Denmark. It was conducted in the second part of 2014, and approximately 1,300 applications from applicants with different profiles were sent to people advertising available rental housing. Briefly, the results showed that applicants with Middle Eastern-sounding names have to send 27% more applications on average than applicants with Danish-sounding names in order to have the same chances of receiving a positive reply to their application. The follow-up on the mapping was a set of guidelines published by the EFA for avoiding differential treatment for people seeking rental housing and for landlords.

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<sup>254</sup> Ankestyrelsen (2015), *Omfanget af forskelsbehandling på lejeboligmarkedet* [The scope of unequal treatment of new-Danes. A field experimental study on the rental housing market]. København.



## 8. Estonia

**Expert: Jelena Helemäe**

### 1. Relevant legal framework

National legislation does not provide an explicit obligation to collect equality data on the grounds covered in this project in the fields of employment, health and education.

According to the Government of the Republic Act,<sup>255</sup> it is within the remit of the Ministry of Social Affairs to promote equal treatment as well as the equality of men and women, including co-ordination of activities in this field, and the preparation of corresponding draft legislation (Article 67 (1)). However, the Ministry does not apply specific measures related to the collection of data revealing equality/inequality.<sup>256</sup>

The Equal Treatment Act<sup>257</sup> is the only national act specifically dedicated to protecting people against discrimination on grounds of ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation. However, there is no clear permission or requirement to collect equality data in the Equal Treatment Act; the obligation 'to monitor compliance with the requirements' (Article 14) will typically be interpreted as obliging each ministry to fulfil all relevant legal provisions.

The basic legal act dealing with the collection of equality data is the Official Statistics Act,<sup>258</sup> in the context of this report the most important element of national data collection is the population census when authorities are entitled to collect data inter alia on ethnic origin, native language, religion, health problems, place of birth, place of birth of parents and year of arrival in Estonia (Article 22 of the Official Statistics Act). Data on religious belief is the only information that is provided by respondents on a voluntary basis in the course of the census<sup>259</sup> (Article 23). Census data, including data on religious affiliation, are easily accessible and the most important data are also available in a public database.<sup>260</sup>

The official statistics are normally collected on the basis of the programme, which is the list of the so-called statistical actions (statistical surveys, censuses, statistical publications or statistical registers, etc.) (Article 4, Official Statistics Act). Some statistical actions de facto include equality data collection, e.g. data related to the situation of various vulnerable groups in education or employment. The most recent statistical programme for 2016-2020 was adopted by the Government of the Republic on 17 March 2016.<sup>261</sup>

According to the Equal Treatment Act (Article 16), the Gender Equality and Equal Treatment Commissioner<sup>262</sup> (equality body) shall analyse the effect of laws on the situation of people with any of the characteristics specified in the Act (i.e. ethnic origin, race, colour, religion or other beliefs, age, disability or sexual orientation) and on the situation of men and women in society. The Chancellor of Justice<sup>263</sup> (constitutionality control body, ombudsman and de facto the second equality body) shall also perform the

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<sup>255</sup> Estonia, Government of the Republic Act (*Vabariigi Valitsuse seadus*), *Riigi Teataja* I 1995, 94, 1628. *Riigi Teataja* (hereinafter RT) is the Official Gazette.

<sup>256</sup> Ministry of Social Affairs; Written communication of 22 January 2016. Some relevant data may be collected by the Ministry of Culture in the framework of so-called Integration Monitoring – see below.

<sup>257</sup> Estonia, Equal Treatment Act (*Võrdse kohtlemise seadus*), RT I 2008, 56, 315.

<sup>258</sup> Estonia, Official Statistics Act (*Riikliku statistika seadus*), RT I 2010, 41, 241.

<sup>259</sup> The census question was worded as follows: 'Do you have any religious affiliation? (answering is voluntary); Please indicate your religious affiliation (answering is voluntary)'. See: [www.stat.ee/rel2011](http://www.stat.ee/rel2011).

<sup>260</sup> See: [pub.stat.ee](http://pub.stat.ee).

<sup>261</sup> See: <http://www.stat.ee/364765>.

<sup>262</sup> *Soolise võrdõiguslikkuse ja võrdse kohtlemise volinik*.

<sup>263</sup> *Õiguskantsler*.

duties for the application of the principles of equality and equal treatment and, most importantly, 'analyse the effect of the implementation of legislation on the condition of members of society...' (Article 35-16 of the Chancellor of Justice Act).<sup>264</sup> However, it is not completely clear if these legal norms per se can serve as the legal basis for equality data collection.

The Employment Contracts Act<sup>265</sup> (Article 3) obliges employers to ensure the protection of employees against discrimination and to follow the principles of equality legislation. However, this law is silent about any practical arrangements necessary to implement this requirement. There is no obligation or explicit permission for employers to monitor the ethnic, religious, etc. composition of their staff. In pre-contractual negotiations, 'absence of the employer's legitimate interest is presumed first of all in the case of questions which disproportionately concern the private life of the person applying for employment or which are not related to their suitability for the job offered' (Article 11 (1)-(2)).

Specific opportunities for processing personal data are provided in the Public Health Act<sup>266</sup> (various medical databases) and in the Criminal Records Database Act.<sup>267</sup>

There are no amendments pending at the national level on data collection.

In every practical sense, the main obstacle to equality data collection is the Personal Data Protection Act.<sup>268</sup> Data on ethnic or racial origin, state of health and disability, religion or belief or sexual orientation are regarded as sensitive personal data (Article 4 (2)). The Act does not explicitly ban the collection and processing of personal data, including sensitive personal data, but provides for strict rules for their collection and processing. Violation of personal data processing requirements is an offence punishable by a fine (Article 42). Processing personal data is permitted only with the consent of the data subject 'unless otherwise provided for by law' (Article 10).

There exists an obligation to register the processing of sensitive personal data (in fact, to apply for relevant permission) or to appoint a person responsible for the protection of personal data. Otherwise, processing of sensitive personal data is prohibited. The special control body – the Data Protection Inspectorate<sup>269</sup> – shall refuse to register processing of sensitive personal data if there are no legal grounds for the processing (Article 27 (5)). A processor of personal data is required to adhere to a number of principles, including the principles of legality, purposefulness (processing only to achieve specific and lawful objectives) and minimalism (personal data shall be used for other purposes only with the consent of the data subject or with the permission of a competent authority) (Article 6). We can only presume that equality data collection is a lawful objective for processing sensitive personal data and that equality data processing can be justified by national equality law.

Estonian law seems to be in conformity with the Data Collection Directive 95/46/EC. However, judicial interpretation is required regarding some aspects of collecting and processing personal data.

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<sup>264</sup> Estonia, Chancellor of Justice Act (*Õiguskantsleri seadus*), RT I 1999, 29, 406.

<sup>265</sup> Estonia, Employment Contracts Act (*Töölepingu seadus*), RT I 2009, 5, 35.

<sup>266</sup> Estonia, Public Health Act (*Rahvatervise seadus*), RT I 1995, 57, 978.

<sup>267</sup> Estonia, Criminal Records Database Act (*Karistusregistri seadus*), RT I, 21.03.2011, 3.

<sup>268</sup> Estonia, Personal Data Protection Act (*Isikuandmete kaitse seadus*), RT I 2007, 24, 127.

<sup>269</sup> *Andmekaitse Inspeksioon*.

| Consent | Employment | Health/life | Public | Members | Legal claim | Medicine | Public interest – Other   |
|---------|------------|-------------|--------|---------|-------------|----------|---|
| X       | ?          | X           | X      | ?       | ?           | X        | Law, international agreement, directly applicable European Council or European Commission act; protection of the life, health or freedom of the data subject or other person in exceptional circumstances |

## 2. Definitions and categories used to collect equality data

Of the population census data that authorities are obliged to collect, according to the Official Statistics Act (Article 22), data on age, ethnic nationality, religion and long-term illness (also mother tongue, citizenship and place/country of birth as proxies of ethnic origin) are those covered in this research. These data for the 2011 Census were collected by Statistics Estonia based on self-identification according to the following definitions.<sup>270</sup>

### (a) Racial or ethnic origin

**Ethnic nationality** – ethnic nationality is determined by the respondent. The individual has the right to declare themselves a member of that ethnic nationality to which they feel the strongest ethnic and cultural affiliation. If a person feels affiliation to several ethnicities, they should specify the one that is most important to them.<sup>271</sup>

*Proxies:*

**Mother tongue** – the language, which was learned in early childhood as the first language and in which the individual is generally most proficient.<sup>272</sup>

**Place/country of birth** – a place (country, administrative unit) where the person's mother was a (permanent) resident at the time of the person's birth. For people who were born abroad, the name of the country was recorded, according to the state borders valid at the time of the Census.<sup>273</sup>

**Citizenship** – the country of which someone is a citizen. If the individual has several citizenships, it was possible to record only one, with the priority being given to Estonian citizenship and the second preference was the citizenship of another European Union country. "Citizenship undetermined" was recorded if the person had been issued an Estonian alien's passport (the so-called "grey passport").<sup>274</sup>

<sup>270</sup> See: [http://pub.stat.ee/px-web.2001/I\\_Databas/Population\\_census/PHC2011/01Demographic\\_and\\_ethno\\_cultural\\_characteristics/02Citizenship/PC\\_01.htm](http://pub.stat.ee/px-web.2001/I_Databas/Population_census/PHC2011/01Demographic_and_ethno_cultural_characteristics/02Citizenship/PC_01.htm).

<sup>271</sup> The ethnic nationality of children was decided by their parents. In households where mother and father belong to different ethnicities and have difficulties deciding the ethnic nationality of children, the ethnic nationality of the mother should be favoured.

<sup>272</sup> The mother tongue of young children was decided by their parents. If parents had difficulties deciding the mother tongue of a child, the language usually spoken in the household was recorded. In the case of deaf people, sign language could also be recorded as the mother tongue. If someone became deaf at a later age, the first language learned as a child was recorded as mother tongue.

<sup>273</sup> People born before 1945 in Petseri (*Pechory*) county or in the former territory of the Republic of Estonia to the east of the Narva River, were considered to have been born in Estonia. The place of birth of parents and grandparents was recorded similarly.

<sup>274</sup> For children, who had not yet been issued with an identity document, the citizenship acquired by birth was recorded. The child was considered an Estonian citizen if at least one of his/her parents was an Estonian citizen at the time of the birth of the child (if the father had died before that, then at the time of the death of the father). If a child acquired two citizenships by birth, only one was recorded, based on the selection criteria above. If a child is an Estonian resident but has not acquired Estonian or foreign citizenship by birth, the answer "Citizenship undetermined" was recorded.

## **(b) Religion**

The name of the religion was noted for people aged 15 and over who felt an affiliation to a religion (denomination). At the same time the person did not have to be a member of a church or congregation. In addition, it was irrelevant whether the person had been baptised, whether he or she went to church regularly or was a member of a non-Christian association. Answering the questions about religion was voluntary.

## **(c) Disability**

**Limitations of everyday activities due to health problems** – limitations due to health problems which had lasted or were expected to last for at least six months. "Everyday activities" refers to working, studying, housekeeping, personal care, communicating with other people, recreational activities, etc. Everyday activities were considered significantly restricted if the person required daily assistance, and were considered to some extent restricted if the person required assistance with some activities, but not on a daily basis.

**Long-term illness or health problem** – an illness or a health problem which had lasted or was expected to last for at least six months. This also includes health problems from which a person had suffered for a long time, but which had not been diagnosed by a doctor. In addition, long-term health problems include recurrent health problems, including conditions which were controlled or relieved by regular administration of medication or other treatments.

## **(d) Age**

People's age was calculated based on their personal identification code, which contains the full information about their gender and date of birth.

Categories for country of birth, ethnic nationality, mother tongue, religion and citizenship were based on international classifications.<sup>275</sup> The categories of "significant restrictions", "insignificant restrictions" and "no restrictions at all" were used to measure limitations of everyday activities due to health problems.

## **3. Practical implementation**

As explained above, in Estonia data on ethnicity are regularly collected in the framework of various surveys. In practice in public-use data files (Estonian LFS, Estonian SS, Household Budget Survey), as well as in public-use databases (based on census and major national surveys) available on the Statistics Estonia website, ethnic origin is often broken down into categories of Estonians versus non-Estonians or at best into Estonians, Russians and "other ethnic groups".

In addition to population censuses, data pertaining to racial or ethnic origin are collected as part of European surveys (LFS, EU-SILC). The first Labour Force Survey was conducted by Statistics Estonia at the beginning of 1995 (ELFS 95).<sup>276</sup> From the very first survey, the ELFS is based on the definitions devised by the International Labour Organization. In the ELFS ethnic origin is determined by the respondent.<sup>277</sup> In the original (not for public use) data files of the ELFS, ethnicity is coded according to a

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<sup>275</sup> 2011 Population and Housing Census. Methodology. Tallinn: Statistics Estonia, 2014.

<sup>276</sup> The retrospective part of this survey enables Statistics Estonia to provide data that characterises the labour market behaviour of the Estonian working-age population since 1989.

<sup>277</sup> 'A person has the right to declare himself or herself a member of that ethnic nationality to which he or she feels the strongest ethnic and cultural affiliation'. Statistics Estonia, *Intervjuerija juhend ETU 2009* [Instructions for interviewer ELFS 2009]: 7.

classification that contains a list of about 130 ethnic groups.<sup>278</sup> Since March 2004 Statistics Estonia has conducted the Estonian Social Survey (Estonian SS), which is the Estonian branch of a pan-European survey of income and living conditions (EU-SILC). In this survey, ethnic origin is also determined by the respondent<sup>279</sup> and coded according to the same classification as in the ELFS.<sup>280</sup>

There is no systematic data collection with regard to sexual orientation/gender identity. The only equality data collection with regard to LGBT people undertaken by the Estonian authorities (the Ministry of Social Affairs) in 2007 was a qualitative study on the discrimination experiences of LGBT people.<sup>281</sup> In another comprehensive study on equal treatment conducted in 2007 LGBT people were just one group.<sup>282</sup>

Of all the grounds covered by this research, data on age are the most consistently collected. While data collection is rarely focused on discrimination experiences, available public-use statistical data reveal the comparative situation of various age groups.

Statistics Estonia has recently started to link data on disability based on the surveys with the Register of Social Insurance Board, but only people who are registered with the Board are taken into account. There is no general overview of the inclusion and social participation of people with registered disabilities, people with loss of capacity for work and people with special educational needs.<sup>283</sup> The public-use database of Statistics Estonia provides only some data related to people with disabilities (such as their income and labour market position, number of people receiving disability pension/pension for incapacity to work or the number of schools for children with special needs and the number of pupils in these schools).

While potentially the census might enable the comparative situation of religious/belief groups to be assessed, in practice only a very narrow range of census data related to religion/belief are available in the public-use database of Statistics Estonia. Since 2004, when Estonia joined ESS, data on belonging to a particular religious group or religion as a ground of discrimination have been regularly collected. But due to the small sample, the numbers of people belonging to the various non-dominant religious groups are also very small.

#### 4. Key issues

In the national context the most challenging issue is the absence of an explicit obligation or permission to collect equality data in Estonian law. Furthermore, personal data protection laws do not clarify if it is possible to collect or process equality data in the context of the fight against discrimination. There is no obligation or explicit permission for employers to monitor the ethnic, religious, etc. composition of their staff, even in the

<sup>278</sup> For example, in the original ELFS 2011, 31 ethnic groups were mentioned by respondents; most of them were very small.

<sup>279</sup> The wording of the question was: 'What is your ethnicity?' (but neither the Interviewer's Instructions nor the public-use database provides a definition of ethnic origin).

<sup>280</sup> Major national surveys are usually conducted as face-to-face interviews and to answer questions about ethnic origin the respondent is not provided with any list/card of options to choose between. The 2011 Census was different as about 67% of the Estonian population answered census questions online. They were expected to choose the answer from a pre-determined international classification of ethnic groups or, in the case of being unable to find a suitable choice, entering the response in an open text field (Statistics Estonia (2013), *Census Snapshots*. Tallinn: 59).

<sup>281</sup> Strömpl, J. (2007), *GLBT-inimeste ebavõrdne kohtlemine Eestis. Uuringu lõpparuanne* [Unequal treatment of LGBT people. Final report]. Tartu ülikool. See: [http://www.sm.ee/sites/default/files/content-editors/Ministeerium\\_kontaktid/Uuringu\\_ja\\_analuusid/Sotsiaalvaldkond/glb-inimeste\\_20ebav\\_c3\\_b5rdne\\_20kohtlemine\\_20eestis\\_1.pdf](http://www.sm.ee/sites/default/files/content-editors/Ministeerium_kontaktid/Uuringu_ja_analuusid/Sotsiaalvaldkond/glb-inimeste_20ebav_c3_b5rdne_20kohtlemine_20eestis_1.pdf).

<sup>282</sup> Lagerspetz, M. et al (2007), *Isiku tunnuste või sotsiaalse positsiooni tõttu aset leidev ebavõrdne kohtlemine: elanike hoiakud, kogemused ja teadlikkus. Uuringuraport* [Personal characteristics and social position. Unequal treatment: attitudes, experiences and awareness. Survey report]: , Tallinn.

<sup>283</sup> Sakkeus, L., 'Development of approaches to the population with activity limitations'. In Statistics Estonia (2014), *Social integration of disabled persons*. Tallinn.

non-discrimination context; educators are not supposed to do this either. Regretfully, these shortcomings have not been publicly debated, either by experts or by civil society organisations. Effective anti-discrimination activities are hardly possible without addressing these issues in law and practice.

In spite of these problems, the collection and processing of personal data for statistical purposes is quite developed in Estonia, with the only exception being LGBTI people. Estonia uses several progressive methods of data collection, including in the context of European surveys. Furthermore, various public registers may include data necessary to highlight the situation of vulnerable groups. Nevertheless, it is crucially important to explicitly require the statistical body and/or equality bodies to deal with the collection, processing and analysis of equality data.

The Integration Monitoring, commissioned by the Ministry of Culture, is an example of good practice with regard to surveys that collect data to assess the comparative situation of various ethnic groups. The monitoring is an in-depth survey carried out every three to four years. The survey permits integration activities to be assessed and the drafting of relevant policies to be improved. The monitoring deals with such issues as equal treatment, socio-economic inequality, citizenship, education and participation in political life and the life of society. Most results of the survey are publicly available.<sup>284</sup>

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<sup>284</sup> See: <http://www.kul.ee/en/results-integration-monitoring-estonian-society>.

## 9. Finland

**Expert: Simo Mannila**

### 1. Relevant legal framework

There is no specific legal provision on collecting equality data in Finland. Equality data collection is regulated by a number of general laws such as the Law on Statistics (280/ 2004),<sup>285</sup> the Non-Discrimination Act (1325/2014),<sup>286</sup> the Law on Equality between Men and Women (609/ 1986),<sup>287</sup> the Law on the Finnish Immigration Service (156/ 1995)<sup>288</sup> and the Law on the Integration of Immigrants (1386/ 2010).<sup>289</sup> In addition, the laws defining and regulating the functions of the relevant institutions, such as the Social Insurance Institution,<sup>290</sup> the National Institute for Health and Welfare<sup>291</sup> (these two organisations are also considered to be statistical institutions), the Ombudsman for Equality between Men and Women,<sup>292</sup> the Ombudsman for Equality,<sup>293</sup> the Equality Board,<sup>294</sup> the Parliamentary Ombudsman,<sup>295</sup> the Chancellor of Justice<sup>296</sup> and labour protection inspection,<sup>297</sup> define the obligations of data collection and reporting from their fields of activity relevant to equality. Finland does not carry out censuses due its developed population registers, and there is a possibility to link data from various registers together as well as combine register data and survey data.

The general rules of data collection and use are defined by the Personal Data Act (Data Protection Law) (523/ 1999)<sup>298</sup> in compliance with the EU Data Collection Directive 95/46/, with minor differences. According to the Personal Data Act, personal data are deemed to be sensitive, if they relate to or are intended to relate to:

- race or ethnic origin;
- the social, political or religious affiliation or trade-union membership of a person;

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<sup>285</sup> Finland, Law on Statistics (*Tilastolaki*, 280/2004/), adopted 23 April 2004, [www.finlex.fi/fi/laki/ajantasa/2004/20040280](http://www.finlex.fi/fi/laki/ajantasa/2004/20040280).

<sup>286</sup> Finland, Non-Discrimination Act (*Yhdenvertaisuuslaki*, 1325/ 2014), adopted 30 December 2014, [www.finlex.fi/fi/laki/ajantasa/2014/20141325?search%5Btype%5D=pika&search%5Bpika%5D=yhdenvertaisuuslaki](http://www.finlex.fi/fi/laki/ajantasa/2014/20141325?search%5Btype%5D=pika&search%5Bpika%5D=yhdenvertaisuuslaki).

<sup>287</sup> Finland, Law on Equality between Men and Women (*Laki miesten ja naisten välisestä tasa-arvosta*, 609/ 1986), adopted 8 August 1986, [www.finlex.fi/fi/laki/alkup/1986/19860609](http://www.finlex.fi/fi/laki/alkup/1986/19860609).

<sup>288</sup> Finland, Law on the Finnish Immigration Service (*Laki Maahanmuuttovirastosta*, 156/ 1995), adopted 3 February 1995, [www.finlex.fi/fi/laki/ajantasa/1995/19950156](http://www.finlex.fi/fi/laki/ajantasa/1995/19950156).

<sup>289</sup> Finland, Law on the Integration of Immigrants (*Laki kotoutumisen edistämisestä*, 1386/ 2010), adopted 30 December 2010, [www.finlex.fi/fi/laki/ajantasa/2010/20101386](http://www.finlex.fi/fi/laki/ajantasa/2010/20101386).

<sup>290</sup> Finland, Law on the Social Insurance Institution (*Laki Kansaneläkelaitoksesta*, 731/2001), adopted 17 August 2001, [www.finlex.fi/fi/laki/ajantasa/2001/20010731](http://www.finlex.fi/fi/laki/ajantasa/2001/20010731).

<sup>291</sup> Finland, Law on the National Institute for Health and Welfare (*Laki Terveystieteiden ja hyvinvoinnin laitoksesta*, 668/ 2008), adopted 31 December 2008, [www.finlex.fi/fi/laki/alkup/2008/20080668](http://www.finlex.fi/fi/laki/alkup/2008/20080668).

<sup>292</sup> Finland, Law on the Ombudsman for Equality between Men and Women (*Laki tasa-arvovaltuutetusta*, 1328/ 2014), adopted 30 December 2014, [www.tasa-arvo.fi/web/fi/laki-tasa-arvovaltuutetusta](http://www.tasa-arvo.fi/web/fi/laki-tasa-arvovaltuutetusta).

<sup>293</sup> Finland, Law on the Ombudsman for Equality (*Laki yhdenvertaisuusvaltuutetusta*, 1326/2014), adopted 30 December 2014, [www.finlex.fi/fi/laki/alkup/2014/20141326?search%5Btype%5D=pika&search%5Bpika%5D=yhdenvertaisuusvaltuutettu](http://www.finlex.fi/fi/laki/alkup/2014/20141326?search%5Btype%5D=pika&search%5Bpika%5D=yhdenvertaisuusvaltuutettu).

<sup>294</sup> Finland, Law on the Equality Board (*Laki yhdenvertaisuus- ja tasa-arvolautakunnasta*, 1327/ 2014), adopted 30 December 2014 [www.finlex.fi/fi/laki/alkup/2014/20141327](http://www.finlex.fi/fi/laki/alkup/2014/20141327).

<sup>295</sup> Finland, Law on the Parliamentary Ombudsman (*Laki eduskunnan oikeusasiamiehestä*, 197/ 2002), adopted 14 March 2002, [www.oikeusasiamies.fi/Resource.phx/ea/lakilinkit/laki-eoa.htm](http://www.oikeusasiamies.fi/Resource.phx/ea/lakilinkit/laki-eoa.htm).

<sup>296</sup> Finland, Law on the Chancellor of Justice at the Council of State (*Laki valtioneuvoston oikeuskanslerista*, 2000/193), adopted 25 February 2000, [www.finlex.fi/fi/laki/ajantasa/2000/20000193](http://www.finlex.fi/fi/laki/ajantasa/2000/20000193).

<sup>297</sup> Finland, Law on labour protection inspection and labour protection (*Laki työsuojelun valvonnasta ja työpaikan työsuojeluyhteistoiminnasta*, 44/ 2006), adopted 20 January 2006, [www.finlex.fi/fi/laki/ajantasa/2006/20060044](http://www.finlex.fi/fi/laki/ajantasa/2006/20060044).

<sup>298</sup> Finland, Personal Data Act (*Henkilötietolaki*, 523/ 1999) adopted 22 April 1999, [www.finlex.fi/fi/laki/ajantasa/1999/19990523](http://www.finlex.fi/fi/laki/ajantasa/1999/19990523). There is also a separate law regulating the collection and use of personal data in working life, the Law on the Protection of Privacy in Working Life (*Laki yksityisyyden suojasta työelämässä*, 759/2004), adopted 13 August 2004, [www.finlex.fi/fi/laki/ajantasa/2004/20040759](http://www.finlex.fi/fi/laki/ajantasa/2004/20040759).

- a criminal act, punishment or other criminal sanction;
- the state of health, illness or handicap of a person or the treatment or other comparable measures directed at the person;
- the sexual preferences or sex life of a person; or
- the social welfare needs of a person or the benefits, support or other social welfare assistance received by the person.

The exceptions to allow the collection of sensitive data are defined in Chapter 3 Section 12 of the Personal Data Act. The prohibition does not apply to:

1. processing of data where the data subject has given express consent;
2. processing of data on the social, political or religious affiliation or trade union membership of a person, where the person has himself/herself brought the data into the public domain;
3. processing of data necessary for the safeguarding of a vital interest of the data subject or someone else, if the data subject is incapable of giving his/her consent;
4. processing of data necessary for drafting or filing a lawsuit or for responding to or deciding such a lawsuit;
5. processing of data where it is based on the provisions of an act or necessary for compliance with an obligation to which the controlled is subjected directly by virtue of an act
6. processing of data for purposes of historical, scientific or statistical research;
7. processing of data on religious, political or social affiliation in the operations of an association or corporation professing such affiliation where the data relate to members of the association or corporation or to persons connected to the association or corporation on a regular basis and in the context of the stated purposes of the association or corporation, and where the data is not disclosed to a third party without the consent of the data subject;
8. processing of data on trade union membership in the operations of a trade union or a federation of trade unions where the data relate to the members of the union or federation or to persons connected to the union or federation on a regular basis and in the context of the stated purposes of the union or federation, and where the data is not disclosed to a third party without the consent of the data subject;
9. processing of data on trade union membership where necessary for the observation of the special rights and duties of the controller in the field of labour law;
10. a healthcare unit or a healthcare professional processing data collected in the course of their operations and relating to the state of health, illness or disability of the data subject or the treatment or other measures directed at the data subject or other data which are indispensable in the treatment of the data subject;
11. an insurer processing data collected in the course of its insurance activity and relating to the state of health, illness or disability of the policy holder/ claimant or the treatment or other measures directed at the policy holder / claimant, or data on the criminal act, punishment or other sanction of the policy holder/ claimant or the person causing the damage where necessary for the determination of the liability of the insurer;
12. a social welfare authority or another authority, institution or private producer of social services granting social welfare benefits processing data collected in the course of their operations and relating to the social welfare needs of the data subject or the benefits, support or other social welfare assistance received by the person or otherwise indispensable for the welfare of the data subject; or processing data where the Data Protection Board has issued a permission for a reason pertaining to an important public interest.



The rights of data collection and use related to work (between employers and employees) are regulated by separate legislation.<sup>299</sup>

| Consent | Employment | Health/life | Public | Members | Legal claim | Medicine | Public interest – Other |
|---------|------------|-------------|--------|---------|-------------|----------|-------------------------|
| X       | X          | X           | X      | X       | X           | X        | X                       |

## 2. Definitions and categories used to collect equality data

In Finland the main definition in the collection of equality data is based on self-identification. For *disability*, a person must apply for disability pension or benefit, or some disability-related service (e.g. transport) to be classified as disabled; in employment services, it is possible for a person to be classified as being in need of special services due to disability, but this also requires consent. In all cases some medical evidence is required – assessment of disability – but it has administrative impact only with the person’s consent. For *age*, the person either presents a document stating their age, or is asked about their age. For *religion*, the tax authorities (which have a link to the population register) have the question “Evangelical-Lutheran/ Orthodox/ other”, but this information is also based on self-identification, which is the criterion in surveys, where religion is in focus. For *sexual orientation and gender identity*, there are surveys targeted at people involved with SETA – LGBTI Rights in Finland or services for LGBTI people, plus statistics from medical interventions for gender reassignment and legally recognised partnerships. So although in many cases administrative records are used, basically it can be seen that all categorisation, including the administrative, in equality data is based on self-identification or individual consent.

For *ethnic or racial origin* the categorisation is mainly based on proxies, in relation to immigrants. The proxies are country of origin and language and these can be checked against each other (e.g. are Russian-speakers Estonian Russians or Estonians): this data is accessible from the population register held by the Finnish Population Register Centre.<sup>300</sup> The data is utilised in compliance with Finnish legislation, the sampling done by Statistics Finland. For the two key traditional minorities in Finland, Roma and Saami, self-identification is the key defining criterion. There is no precise data on these two groups, since there are controversies concerning who is who and language is not a key distinction here. In data collection, representatives from these two groups are often relied on for categorisation (identification of the target group) or help in data collection (Finnish Roma Council regional structures and the Saami Parliament).

## 3. Practical implementation

Equality data is primarily compiled by the Ministry of Justice from several sources, in accordance with a four-year working programme of the Ministry. This programme can be considered to be an element of the Government Action Plan on Human Rights. During 2007-15 there was also a National Action Plan to Promote Equality (Equality is a Priority, acronym: YES).<sup>301</sup> The data collection for the four-year programme consists of two parts.

<sup>299</sup> Finland, Law on the Protection of Privacy in Working Life (759/2004), adopted 13 Aug 2004, <http://www.finlex.fi/fi/laki/ajantasa/2004/20040759>.

<sup>300</sup> For more information on the Finnish population information system, see <http://www.vrk.fi/default.aspx?id=39>.

<sup>301</sup> Previously, the Ministry of the Interior was responsible for equality policy in Finland, but equality policy was transferred to the Ministry of Justice as of 2015. However, the integration policies for immigrants were

Firstly, all data available from statistics and research (including academic research, but also from sources such as the Ministry of Employment and the Economy, various barometers etc.) is collected routinely by the Ministry; secondly, every year a small study into some special topic is carried out. The study is funded by the Ministry, but the funding can also be pooled from other sources (e.g. other ministries). The Ministry has a large Steering Group to discuss the special annual topics and follow up discrimination monitoring as a whole; it consists of a large group of stakeholders (representatives of ministries, research bodies and NGOs). The Ministry recently prepared a new draft of indicators (with sources) to be collected for equality monitoring. This draft was discussed in the Steering Group meeting of 29 January 2016 and was approved.

#### System of equality and discrimination indicators in Finland (non-official draft)

1. Attitudes
  - Attitudes and political affiliation – research based on elections / University of Tampere, Archive of Social Data.
  - Integration of immigrants – monitoring and research by the Ministry of Employment and the Economy.
  - Survey into good relations between ethnic groups – commissioned by the Council of Ethnic Relations (part of Project Trust, planned for 2016).
2. Discrimination experience
  - Eurobarometer.
  - Quality of Work Conditions Survey.
  - School health study.
  - National barometers (working conditions, youth, immigration).
  - Targeted research by the Discrimination Monitoring Group.
3. Hate crimes, hate speech
  - Hate crime research by the Police University College.
  - Hate speech research to be commissioned at four-year intervals by the Discrimination Monitoring Group (first study to be done in 2016).
4. Discrimination claims and court cases
  - Administrative data from law enforcement (labour protection inspectorate; Ombudsman for Equality; Ombudsman for Equality between Women and Men; Chancellor of Justice, Parliamentary Ombudsman of Justice).
  - Legal statistics on discrimination.
5. Promotion of equality
  - Follow-up survey on equality planning for local governments.
  - Follow-up data from labour market partners (EK enterprise survey; SAK survey of member organisations).

In data collection Statistics Finland is of key importance, but monitoring equality in Finland is based on a mosaic of various types of data from very many sources. In Finland there is practically no data collection without corresponding reporting or research interest, and lately there have been several interesting surveys into equality.<sup>302</sup> Equality

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earlier transferred to the Ministry of Employment and Economy, which is also responsible for the related data collection.

<sup>302</sup> Pohjanpää, K., Paananen, S. & Nieminen, M. (2003) *Maahanmuuttajien elinolot. Tilastokeskuksen julkaisuja. Elinolot 2003: 1* (Living conditions of immigrants, target groups Russian-speaking, Estonian, Somali and Vietnamese immigrants.) Helsinki: Tilastokeskus (Statistics Finland).

Jasinskaja-Lahti, I., Liebkind, K. & Vesala, T. (2002) *Rasismi ja syrjintä Suomessa. Maahanmuuttajien kokemuksia* (Racism and discrimination in Finland – immigrants' experiences.) Helsinki: Gaudeamus.

Liebkind, K., Mannila, S., Jasinskaja-Lahti, I., Jaakkola, M., Kytäjä, E. & Reuter, A. (2004) *Venäläinen, virolainen, suomalainen* (Three immigrant groups: Russian-speakers, Estonians and ethnic Finnish immigrants – their integration in Finland) Helsinki: Gaudeamus.

Castaneda, A. E., Rask, S., Koponen, P., Mölsä, M. & Koskinen, S. (eds.) (2012) *Maahanmuuttajien terveys ja hyvinvointi* (Study on health and well-being of immigrants with Russian, Somali and Kurdish background). Terveysten ja hyvinvoinnin laitos, raportteja 61/ 2012. Helsinki: Institute for Health and Welfare in cooperation with Statistics Finland and the Social Insurance Institution (SII).

data is often collected as a small part of a major survey (e.g. Quality of Working Conditions Survey)<sup>303</sup> or as a part of monitoring (e.g. on integration of immigrants or equality planning). It can be seen that a unified comprehensive system of equality data would be very difficult and costly to build, due to the manifold target groups and their potential risks. Data collected from various sources (surveys, administrative records and lawsuits) and relevant to a particular topic of interest can be reported concisely in a single analytical report.<sup>304</sup>

The EU-wide standard surveys also contain data that could be utilised for equality monitoring. The Finnish Labour Force Survey<sup>305</sup> and the Finnish Income Distribution Statistics<sup>306</sup> (used for EU-SILC) contain data on gender and age and, if linked with population register data, it would also be possible to analyse ethnicity by proxies of country of birth or language by means of these data. Finland has participated in all the ESS rounds since 2002 (national coordination: University of Turku) so this data would also be available for further equality analysis.<sup>307</sup>

The key problem here is that more funding is needed for equality data collection: representative data collection is expensive and some issues (e.g. LGBTI-related ones) require separate targeting in order to obtain good data. Court cases and complaints to the highest juridical authorities are either collected statistically (e.g. by the Ombudsmen) or as individual cases included in annual reports (e.g. the Chancellor of Justice). There is also a great deal of academic research based on qualitative data, but it is less relevant for policy-making.

Access to the data is regulated by the data protection legislation, and the data is available to the administrative bodies funding the data collection and commissioning research and the researchers involved. The purpose of data collection and storing must always be defined and the data must be used solely for the defined purpose. All government institutions and research bodies have ethical councils or corresponding bodies to assess research proposals and supervise to ensure that data is collected and used in compliance with the law and ethical standards of scientific work. Data collected for statistics or research are also supervised by steering or reference groups that also regulate access to the data.

#### 4. Key issues

There are no major problems in the field of equality data protection and no case law on controversial issues. This may largely be due to the high level of confidence which has thus far been typical of Finnish society. The main controversy in the field of data protection in Finland may be related to the ongoing reform of the social and health

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Nieminen, T., Sutela, H. & Hannula, U. (2015) *Ulkomaista syntyperää olevien työ ja hyvinvointi Suomessa 2014* (Work and well-being of foreign-born people in Finland in 2014) Helsinki: Tilastokeskus (Statistics Finland).

Lyly-Yrjänäinen, M. (2015) *Työolobarometri. Syksy 2014, ennakkotietoja* (Working Conditions Barometer, August 2014 Preliminary results). Helsinki: Finnish Ministry for the Employment and Economy.

<sup>303</sup> Lehto, A-M. & Sutela, H. (2014) *Työolojen muutokset 1977 – 2013. SVT* (Changes in working conditions 1977 – 2013, published as a volume in Official Statistics of Finland, with the questionnaire), Helsinki: Tilastokeskus. [www.stat.fi/tup/julkaisut/tiedostot/julkaisuluettelo/ytmv\\_197713\\_2014\\_12309\\_net.pdf](http://www.stat.fi/tup/julkaisut/tiedostot/julkaisuluettelo/ytmv_197713_2014_12309_net.pdf).

<sup>304</sup> Pietiläinen, M. & Keski-Petäjä, M. (2014) *Monitoring labour discrimination in Finland*, MEE Publications Employment and entrepreneurship 53/ 2014. Helsinki: Ministry of Employment and the Economy. Summary report on data and findings, in Finnish with English summary.

[www.stat.fi/tup/julkaisut/tiedostot/julkaisuluettelo/ytmv\\_197713\\_2014\\_12309\\_net.pdf](http://www.stat.fi/tup/julkaisut/tiedostot/julkaisuluettelo/ytmv_197713_2014_12309_net.pdf).

<sup>305</sup> General description of the Finnish Labour Force Survey, see [www.stat.fi/til/tyti/index.html](http://www.stat.fi/til/tyti/index.html) (in Finnish) and [www.stat.fi/til/tyti/2016/02/tyti\\_2016\\_02\\_2016-03-22\\_laa\\_001\\_en.html](http://www.stat.fi/til/tyti/2016/02/tyti_2016_02_2016-03-22_laa_001_en.html) (in English).

<sup>306</sup> General description of the Finnish Income Distribution Statistics, see <http://tilastokeskus.fi/til/tjt/> (in Finnish) and [www.stat.fi/meta/til/tjt\\_en.html](http://www.stat.fi/meta/til/tjt_en.html) (in English).

<sup>307</sup> European Social Survey in Finland, [www.europeansocialsurvey.org/about/country/finland/finnish/ess\\_finland.html](http://www.europeansocialsurvey.org/about/country/finland/finnish/ess_finland.html) (in Finnish).

services, the development of e-health, but in this case too there is no major discourse on equality data in particular.

## 10. France

**Experts: Martin Clément and Thomas Kirszbaum**

### 1. Relevant legal framework

The Law of 10 July 1987 to promote the employment of workers with disabilities is the only French law requiring the collection of equality data (gender equality, not covered in this report, is the other exception).<sup>308</sup> The 1987 Law imposes on all employers (private and public) with at least 20 employees the obligation that at least 6% of full-time or part-time jobs are filled by workers with disabilities. The employers affected must supply the administrative authority with an annual statement showing the number of jobs occupied by people with disabilities compared with all existing jobs. If this statement is not made within the prescribed time limits, the company is exposed to a financial penalty which can be as much as 1,500 times the hourly minimum wage, increased by 25% for each person with disabilities who should have been hired.<sup>309</sup>

The Law on Information Technology and Freedom of 6 January 1978 started regulating the collection of "sensitive data".<sup>310</sup> Article 8 prohibits the collection and processing of personal data revealing racial origin, political, philosophical or religious beliefs, labour-union membership and lifestyle. The National Commission for Information Technology and Freedom (CNIL)<sup>311</sup> also considers the physical characteristics (i.e. skin colour) that might reveal an alleged racial or ethnic origin as "sensitive data", as well as processing names or surnames in order to determine an origin. Address, citizenship and place of birth are not considered sensitive data but the relevance of collecting them must be proven.<sup>312</sup>

The Law of 6 August 2004 transposing Directive 95/46/EC<sup>313</sup> completed this list by adding data on ethnic origin, health and sex life in conformity with Article 8.1 of the Directive.<sup>314</sup> This latter Law limits a priori control of files by the CNIL, replaced by a posterior control in most cases. In return, powers of investigation and access to data for the Commission are increased. The CNIL can, on its own initiative or following a complaint by an individual, carry out audits on the spot concerning any database.<sup>315</sup> The range of sanctions for non-compliance with its rules is wide (ranging from a warning, to an order to cease the processing of the data and pecuniary sanctions).

The 1978 law establishes a general principle of prohibition but also provides a list of exemptions. Collecting and processing "sensitive data" is possible insofar as the purpose of the processing requires it and that certain conditions are met; all grounds of

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<sup>308</sup> France, Law 87-517 of 10 July 1987 to promote the employment of disabled workers (*Loi n° 87-517 du 10 juillet 1987 en faveur de l'emploi des travailleurs handicapés*)  
[www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000512481](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000512481).

<sup>309</sup> France, Labour code, Article L. 5212-12.  
[www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000006903693&cidTexte=LEGITEXT000006072050](http://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000006903693&cidTexte=LEGITEXT000006072050).

<sup>310</sup> France, Law 78-17 of 6 January 1978 on Law on Information Technology and Freedom (*Loi n° 78-17 du 6 janvier 1978 relative à l'informatique, aux fichiers et aux libertés*)  
[www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460).

<sup>311</sup> *Commission nationale de l'informatique et des libertés*.

<sup>312</sup> CNIL (2007), *Mesure de la diversité et protection des données personnelles* [Measurement of Diversity and Protection of Personal Data], 15 May 2007.

<sup>313</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the Protection of Individuals with regard to the Processing of Personal Data and on the Free Movement of such Data.

<sup>314</sup> France, Law 2004-801 of 6 August 2004 on the Protection of Individuals with regard to the Processing of Personal Data amending the Law 78-17 of 6 January 1978 on Law on Information Technology and Freedom. (*Loi n° 2004-801 du 6 août 2004 relative à la protection des personnes physiques à l'égard des traitements de données à caractère personnel et modifiant la loi n° 78-17 du 6 janvier 1978 relative à l'informatique, aux fichiers et aux libertés*)

[www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000441676](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000441676).

<sup>315</sup> [www.cnil.fr/english/the-cnil/role-and-responsibilities](http://www.cnil.fr/english/the-cnil/role-and-responsibilities).

discrimination included in this research (except age) are considered to be sensitive data. By way of derogation to the general principle of prohibition, the national law explicitly authorises processing undertaken by the National Institute of Statistics and Economic Studies (INSEE)<sup>316</sup> or ministerial statistical services after approval of the CNIL, where the consent of the concerned individuals is not required. The law also provides that the processing of “sensitive data” can be authorised by the CNIL if it is justified by the “public interest”. The consent of the individuals does not need to be obtained in this case, but they must be informed about the methods used to collect the data. The justification in the public interest is examined on a case-by-case basis by the CNIL.

The other exceptions foreseen in the law are identical to those listed by Directive 95/46/EC,<sup>317</sup> except Article 8.2b which has not been transposed by the Law of 6 August 2004.<sup>318</sup> Conversely, the French legislator added an exemption not prescribed by the Directive: prohibition shall not apply where ‘processing is necessary for research in the field of health’ (Article 8-II-8). In application of Article 8-4 of the Directive, the national law also stipulates that the CNIL may authorise processing of data when the personal data are “rapidly” subject to a process of anonymisation.

| Consent | Employment | Health/life | Public | Members | Legal claim | Medicine | Public interest – Other |
|---------|------------|-------------|--------|---------|-------------|----------|-------------------------|
| X       |            | X           | X      | X       | X           | X        | X                       |

## 2. Definitions and categories used to collect equality data

Collecting and processing administrative data is generally limited by the legislation on sensitive data (sexual orientation or religion) or because of the low level of detail of variables (for example, French/foreign nationals or even French/EU foreign nationals/non-EU foreign nationals). Equality data are thus mainly supplied by specific surveys carried out by public research institutions,<sup>319</sup> such as the National Institute for Demographic Studies (INED), or by statistical offices of the ministries, coordinated by the National Institute for Statistics and Economic Studies (INSEE), and which support research programmes. Beyond public statistics, a number of studies document discrimination on various grounds and with diverse methods, such as self-declaration or testing.

In its decision of 15 November 2007, the Constitutional Council forbids processing of data which is necessary to measure diversity. For instance, processing of personal data revealing directly or indirectly people’s racial or ethnic origins or the introduction of variables on race or religion in administrative files (or in the National Directory for the Identification of Natural Persons) are banned. However, the Constitutional Council indicated that subjective data, such as those based on the “sentiment of belonging”, can be collected and processed. In practice, the latter kind of data are rarely collected, with

<sup>316</sup> *Institut national de la statistique et des études économiques.*

<sup>317</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the Protection of Individuals with regard to the Processing of Personal Data and on the Free Movement of such Data.

<sup>318</sup> Article 8.2b of the Directive provides that, ‘processing is necessary for the purposes of carrying out the obligations and specific rights of the controller in the field of employment law in so far as it is authorised by national law providing for adequate safeguards’. The French Parliament considered that this provision essentially applies to situations where employers collect union or church dues. The transposition was not deemed necessary as French labour law does not entail any processing of sensitive data by employers.

<sup>319</sup> See also the data collected by Sciences Po for the European Social Survey: <http://cdsp.sciences-po.fr/enquetes.php?idTheme=10&idRubrique=enquetesINT&lang=FR>.

the noticeable exception of the Trajectories and Origins survey which combined an objective approach (individuals' and parents' country of birth and citizenship at birth) with a subjective approach (discrimination experience).<sup>320</sup>

The Constitutional Council also specified that public statistics are allowed to measure the diversity of the origins of people on the basis of "objective data" such as names, geographical origin or previous citizenship. Public statistical surveys have indeed regularly produced data including country of birth and citizenship at birth in order to determine if a person is an immigrant (born a foreign national abroad and living in France). Statistical offices also produce surveys based on large samples, allowing the children of immigrants to be identified. Questions on the origins of parents have not been considered as equivalent to racial or ethnic data and deemed sensitive by the CNIL. In practice, however, the surveys that collect these kind of data are rare.

Public statistical surveys do not generally ask about religious membership. This question was eliminated from the census in 1872 and is still qualified as "sensitive". INED's and INSEE's surveys thus ask questions on the frequency of religious practices or on the sense of belonging to a religious community, but without asking which one. In 2005, however, INED obtained the authorisation of the CNIL to introduce a question on the "religion of belonging (or of origin)", as a national strand of the international survey, Generations and Gender.<sup>321</sup> In 2009, for the Trajectories and Origins survey, INED was allowed by the CNIL to ask the questions 'Do you have a religion? Which one? How important is religion in your life today?'. National strands of international surveys such as the European Social Survey (ESS),<sup>322</sup> European Values Study (EVS) or World Values Survey also allow this issue to be addressed.

Information on "sexual life" are considered sensitive data, and as such they are not available within administrative files and are rarely collected by public statistics for discrimination analysis purpose. No survey *a fortiori* identifies the intersex population. However, some studies address "sexual minorities", defined as individuals self-identified as lesbian, gay, bisexual, transsexual, transgender, intersex or queer (LGBTTIQ) or those who have sexual relations with same-sex individuals without declaring a specific identity.<sup>323</sup>

With regard to disability, the baseline survey is called Disability-Health (*Handicap-Santé, HS*) and is conducted by the INSEE. The Directorate for Research, Studies and Statistics (DARES)<sup>324</sup> at the Ministry of Employment uses all statistical sources describing the employment situation of people with disabilities, notably the various publications of the INSEE Continuous Employment Survey<sup>325</sup> (LFS) and the Survey on Income and Living Conditions<sup>326</sup> (SILC). It is worth noting that the diverse sources of data do not adopt a harmonised definition of disability, which is sometimes restrictive (limited to administrative recognition) and sometimes broad (situations of incapacity); certain information concerns benefits provided, other information concerns the individuals. It should also be noted that surveys on discrimination experience do not necessarily distinguish between disability and health grounds.<sup>327</sup>

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<sup>320</sup> Beauchemin, C. et al. (2016), *Trajectoires et origines. Enquête sur la diversité des populations en France* [Trajectories and Origins. Survey on the diversity of French populations], Ined Editions.

<sup>321</sup> [www-erfi.ined.fr](http://www-erfi.ined.fr).

<sup>322</sup> See also CDSP, the data collected by Sciences Po for the European Social Survey <http://cdsp.sciences-po.fr/enquetes.php?idTheme=10&idRubrique=enquetesINT&lang=FR>.

<sup>323</sup> See for instance, Beck, F. et al. (eds.) (2007), *Baromètre santé 2005. Attitudes et comportements de santé* [2005 Health Barometer survey. Attitudes and behaviors in relation to health], INPES.

<sup>324</sup> *Direction de l'animation de la recherche, des études et des statistiques*.

<sup>325</sup> [www.insee.fr/en/methodes/default.asp?page=sources/sou-eng-emploi-continu.htm](http://www.insee.fr/en/methodes/default.asp?page=sources/sou-eng-emploi-continu.htm).

<sup>326</sup> [www.insee.fr/en/methodes/default.asp?page=definitions/dispositif-srcv.htm](http://www.insee.fr/en/methodes/default.asp?page=definitions/dispositif-srcv.htm).

<sup>327</sup> Surveys usually ask: 'Have you been discriminated against because of your disability or health status?'.



Although the collection and the processing of age-related data do not pose any specific difficulties, they are rarely undertaken in order to measure inequalities.

### 3. Practical implementation

Although France has a strong and efficient public system of statistics, the production and exploitation of equality data is clearly not at the top of the agenda for statistical offices. As a general rule, national and local public authorities do not collect equality data for the grounds featured in this project. The Defender of Rights has the mission to develop, facilitate and follow up independent studies and research, but it has received no mandate to order statistical work or studies by public administrations and their statistical services. Periodic surveys carried out by statistical offices may occasionally reveal situations of inequality (depending, for instance, on the level of education or socio-professional status) in various fields (such as employment, health and education), but they are usually not aimed at analysing discrimination.

As regards racial and ethnic origin, statistical offices produce some data revealing inequalities or a feeling of discrimination but these data do not link up with a recognisable public strategy. The only data regularly collected are those of the Ministries of Interior and Justice: an annual inventory of racist acts and threats as recorded by police forces, a register of illegal content reported by web surfers, monthly monitoring of complaints processing by prosecutors, data from the national criminal records and data from a new piece of software of the Ministry of Justice called Cassiopée.

In recent years, the government has given impetus to data collection with regard to other grounds of discrimination. Firstly, in October 2012, the government launched an action programme against violence and discrimination on the grounds of sexual orientation and gender identity. Several measures were included in order to collect and analyse data. Since December 2013, the National Supervisory Board on Crime and Punishment (ONDRP)<sup>328</sup> has included quantitative data on homophobic insults in its victimisation survey called the Quality of Life and Security. But the reform of the statistical system of the Ministries of the Interior and of Justice, announced by the 2012 action programme, has not been implemented.

Secondly, as part of the Priority Youth Plan decided in February 2013, the Inter-Ministerial Committee for Youth asked the National Institute for Youth and Community Education (INJEP)<sup>329</sup> to coordinate the production of a dashboard of about 40 statistical indicators to follow the evolution of the situation of young people in France.<sup>330</sup> Thirdly, the Inter-Ministerial Committee on Disability held in September 2013 has initiated various measures to improve knowledge on people with disabilities, but we are not aware of any follow-up of these measures.<sup>331</sup> Finally, it is worth noting that governmental incentives to improve data collection are non-existent as regards the ground of religion. The only governmental measure taken in recent years was the creation by the Ministry of the Interior in 2010 of a specific monitoring system for anti-Islamic acts.<sup>332</sup>

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<sup>328</sup> *Observatoire national de la délinquance et des réponses pénales.*

<sup>329</sup> *Institut national de la jeunesse et de l'éducation populaire.*

<sup>330</sup> Ministère de la Ville, de la Jeunesse et des Sports (2015), *Etat de la jeunesse* [The situation of young people], [http://www.jeunes.gouv.fr/IMG/pdf/tome\\_2\\_etat\\_de\\_la\\_jeunesse\\_def.pdf](http://www.jeunes.gouv.fr/IMG/pdf/tome_2_etat_de_la_jeunesse_def.pdf).

<sup>331</sup> Announced by the Inter-Ministerial Committee, a report on 'The links between disability and poverty' was published in November 2014. Assimov, C. and Chérèque, J. (2014), *Les liens entre handicap et pauvreté: les difficultés dans l'accès aux droits et aux ressources* [The links between disability and poverty: Difficulties with access to rights and resources], IGAS, November. [www.gouvernement.fr/partage/2717-rapport-de-l-igas-sur-les-liens-entre-handicap-et-pauvrete](http://www.gouvernement.fr/partage/2717-rapport-de-l-igas-sur-les-liens-entre-handicap-et-pauvrete).

<sup>332</sup> Framework convention signed on 10 June 2010 between the Ministry of the Interior and the French Council for Muslim Worship.



There is no directory allowing the number of complaints or judicial decisions sent to or made by the various jurisdictions to be identified and broken down by grounds. The nomenclature of the information system on criminal offences allows the number of cases to be listed but not the profiles of victims of racist or homophobic infringements to be identified. In civil cases, the nomenclature used by jurisdictions do not allow cases pertaining to discrimination to be isolated. For its part, the Defender of Rights publishes statistics listing the number of complaints addressed to it on an annual basis. These data are presented by discrimination grounds and fields (employment, housing, etc.). By processing the complaints, the Defender of Rights attempts to produce more detailed information on the profiles (age, sex, status of activity and geographical origin) of the individuals alleging they were discriminated against.

Some NGOs try to compensate for the shortcomings of the State. The anti-racist association SOS Racisme is historically the first proponent of discrimination testing as a method perceived as a relevant alternative to the so-called “ethnic statistics” that the association strongly opposed. Recognised as admissible evidence by the Court of Cassation in June 2002,<sup>333</sup> discrimination testing was enshrined in the Law of 31 March 2006 on Equal Opportunities. The government recently decided to organise testing on job offers in a sample of large private sector companies.<sup>334</sup> NGOs defending Roma rights also try to compensate for the gaps in official data. The French branch of the European Roma Rights Centre (ERRC) jointly with the League of Human Rights enumerate evictions for illegal land occupation. The National Human Rights Collective Romeurope also publishes annual reports essentially based on qualitative data provided by local associations and collectives.

In two other fields, NGOs, as well as national observatories, collect data. The Collective Against Islamophobia in France (CCIF)<sup>335</sup> collects its own data on the basis of complaints received, in parallel with those collected by the police. While LGBT associations do not wish data on sexual orientation to be collected, they can nevertheless perform a warning function, as does SOS Homophobie. Although it is not an exhaustive inventory of homophobia (a number of victims still do not report), its annual report presents the most complete picture.

#### **4. Key issues**

The main topic of debate in France is the so-called “ethnic statistics debate”, which is subject to periodic and passionate controversies. International organisations, such as the ECRI, CERD or the UN Human Rights Committee, also focus on this issue and encourage the French authorities to develop ethnic or racial data in co-operation with civil society organisations.

The focus of the public debate on ethnic or racial data masks the dearth of available data for other grounds. The variable definition of disability, the low number of surveys identifying differences of treatment based on sexual orientation, gender identity or religion, or else the weak use of age in the analysis of discrimination, illustrate the difficulties of the French public statistical system to deal with equality data. The mobilisation around promoting “diversity” has also had a very limited impact on the collection and processing of equality data. In the absence of such data, especially on origin and sexual orientation, companies and public administrations who sign charters or obtain the Diversity Label make very little progress. The perception of a complex and restrictive system of regulations on personal data is not the least impediment. This is why the Defender of Rights, jointly with the CNIL, published a handbook for private and

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[www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000007069577&fastReqId=74076632](http://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000007069577&fastReqId=74076632).

<sup>334</sup> [www.gouvernement.fr/discriminations-a-l-embauche-le-gouvernement-passe-a-l-attaque](http://www.gouvernement.fr/discriminations-a-l-embauche-le-gouvernement-passe-a-l-attaque).

<sup>335</sup> *Collectif contre l'islamophobie en France*.

public human resources managers in 2012, entitled 'Information gathering to make progress towards equal opportunities'.<sup>336</sup>

If there are best practices in discrimination measurement to be found, they are certainly in scientific works. Three main approaches are being developed: identification of residual discrimination after controlling for other variables,<sup>337</sup> peer testing experiments<sup>338</sup> and experience of discrimination reported by respondents.<sup>339</sup> However, a notable aspect of the French situation is the disconnection between academic work, which increases knowledge about discrimination at the national level, and public policies which do not use these for equality planning.

Universities and research institutes play a major role in processing data from major national statistical surveys. A large part of the scientific work consists of explaining inequalities due to the individuals' characteristics and to discrimination which remains unobserved as such. Applied to existing datasets, this quantitative method has been widely implemented in the field of employment in order to reveal disadvantages based on ethnic or racial grounds. It has also been used to measure wage discrimination based on sexual orientation

As a result of the 1978 law prohibiting the collection of data on race or ethnicity, most scientific studies proceed indirectly by using a set of proxies (the Trajectories and Origins survey being an important exception). At least for second-generation immigrants of African extraction (the most exposed to discrimination), one proxy commonly used is the birthplace and citizenship at birth of the respondents' parents. First and last names as they are recorded in administrative files are another proxy. This method has been applied in the fields of criminal justice, secondary education and higher education. Audit testing varying French and non-French patronyms is also widely used as a more direct method to identify discrimination. These testing processes have measured the influence of origin, religion and/or place of residence on job searches and on access to private schools.

The introduction of questions on the subjective feeling of discrimination in some public surveys opens new perspectives. In 2008 the Trajectories and Origins survey, implemented by INSEE and INED, measured the discrimination experienced by "visible minorities" within thematic clusters (work, housing and education) and through a dedicated cluster. This latter survey, which also measured objective inequalities, demonstrates that perception of suffered discrimination is a reliable indicator of effective discrimination.

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<sup>336</sup> <http://www.cnil.fr/fr/mesurer-pour-progresser-vers-legalite-des-chances-guide-de-la-cnil-et-du-defenseur-des-droits>.

<sup>337</sup> For a list of the main studies on ethnic or racial discrimination in the job market, see Aeberhardt, R. and Rathelot, R. (2013), 'Les différences liées à l'origine nationale sur le marché du travail français' [Ethnic differentials on the French labour market], in *Revue française d'économie*, 1, pp. 43-71.

<sup>338</sup> See, for instance: Cédiey, E. and Foroni, F. (2007), 'Les discriminations à raisons de "l'origine" dans les embauches en France : une enquête nationale par tests de discrimination selon la méthode du Bureau International du Travail' [Discrimination in access to employment on grounds of foreign origin in France: A national survey of discrimination based on the testing methodology of the International Labor Office], in *Cahiers des Migrations Internationales*, 85F, BIT.

<sup>339</sup> For instance, the Trajectories and Origins survey on living conditions. Beauchemin, C. et al. (2016), op. cit.

## 11. Germany

**Experts: Andreas Hieronymus and Vera Egenberger**

### 1. Relevant legal framework

There is no specific legal provision on the collection of equality data in Germany. Instead, the national legal framework in fact prohibits the collection of sensitive data relating to racial and ethnic origin, political opinion, religious or philosophical convictions, trade union membership, health status or sexual life. However, the national Data Protection Law offers exceptions to this prohibition following the requirements outlined in the EU Data Protection Directive.<sup>340</sup> Requirements to allow the collection of sensitive data are the consent of the person concerned, data having already been made public by the person concerned, the need to develop health programmes and the need to present data for filing a legal claim in court.

The Federal data protection scheme is in conformity with the EU Directive concerning the collection and processing of personal data, which is defined as information concerning racial and ethnic origin, political opinion, religious or philosophical convictions, trade union membership, health status or sexual life.

As Germany is a federal state, all Länder (states) possess their own data protection schemes, which largely follow the national legal requirements. There is no obligation to collect data provided by law. Some Länder provide extensive lists of exceptions under which circumstances sensitive data can be collected. These are: (1) it is provided for by law; (2) the person concerned has consented to the collection of these particular data; (3) the data are required for existential interests of the person concerned, or of a third person if the concerned person is not in a physical or legal condition to provide consent; (4) the persons concerned have made the data publicly available; (5) the data are required to prevent major disadvantages or risks to public order and safety; (6) they are required for scientific purposes; (7) they are required to account for the rights and responsibilities of public bodies in the field of service – and labour law; (8) they are required for health prevention, medical diagnosis, health provisions or treatment of the administration of health services and collected by medical staff or other people who are bound by professional or official secrecy.

| Consent | Employment | Health/life | Public | Members | Legal claim | Medicine | Public interest – Other |
|---------|------------|-------------|--------|---------|-------------|----------|-------------------------|
| X       |            | X           | X      |         | X           | X        |                         |

For the group of people with severe disabilities, Social Code No. IX provides positive measures for accessing employment. Article 71 outlines that private and public employers with more than 20 employees are obliged to employ a workforce of whom at least 5% have a severe disability. If this is not done, compensation must be paid. The employer must report annually to the responsible Employment Agency and Integration Office the percentage of staff with severe disabilities. On this basis, the legal obligations and possible financial compensation are calculated. The legal framework for the employer to collect data on disability in the employment sector is Article 80 (1) and Art.

<sup>340</sup> Germany, Federal Data Protection Law (*Bundesdatenschutzgesetz*), Art. 3 (9), [www.gesetze-im-internet.de/bdsg\\_1990/index.html#BJNR029550990BJNE001503310](http://www.gesetze-im-internet.de/bdsg_1990/index.html#BJNR029550990BJNE001503310), accessed 6 March 2016.

80 (2).<sup>341</sup> Besides this collection of data on people with severe disabilities in relation to employment and access to employment, no sensitive data are systematically collected and there is no obligation to collect data provided for by law.

There is a Federal Commissioner for Data Protection and Freedom of Information.<sup>342</sup> Similar institutions responsible for data protection exist in the Länder.

At Federal level there is a statistical office responsible for collecting demographic data (such as the census and micro-census). Each Land also has a statistical office. The last census was conducted in 2011, based on the census laws at Federal and Länder level and commission regulations.<sup>343</sup>

## **2. Definitions and categories used to collect equality data**

Equality data as such are not collected officially, but there are statistics and registers which contain equality variables and proxies. Some data which can be labelled as "equality data" are collected through the (Micro) Census (Federal Statistical Office), scientific research and the Federal Anti-discrimination Agency (ADS). As Germany is a federal state, legislation, statistics and registers vary from one Land to another and at the Federal level. Similarly, definitions such as "migration background" are often inconsistent. The binary categories of "ethnic" German and "non-German" foreign national, based on the proxy "nationality" was replaced in 2005 by a variety of other, often inconsistent, categories which function as new ethnic markers. Education research and the Micro Census have been at the forefront of developing categories such as "migration background", "birthplace of parents", "language spoken at home" or "non-German language of origin" to mark ethnicity. Others use names (onomastic procedures, ethno-variables) to identify ethnicity. "Religion" and "belief" were used for the first time in the 2011 census to identify Muslims. All these categories have been developed by experts without any consultation with or participation by minority groups.

The collection of data concerning gender is widespread. However, in relation to gender identity and people who do not fall into the binary categories of male and female, such as those identifying as trans\* or intersex, no reliable data are collected. Some data on trans\* people are available in name-change registers and medical registers.

Sexual orientation is not a category for which data are publicly collected. However, in scientific studies data on sexual orientation are at times collected, when consent by the data subject is provided.

Data on disability are based on a medical approach to disability. People are categorised with a "grade of disability", according to their personal mental, physical or health status.<sup>344</sup> Employers collect data on the number of people with severe disabilities working in their company and report these figures on an annual basis to the labour agency and the integration office responsible for handling matters relating to people with disabilities.<sup>345</sup>

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<sup>341</sup> Germany, Social Code (*Sozialgesetzbuch*) No IX, [http://www.gesetze-im-internet.de/sqb\\_9/](http://www.gesetze-im-internet.de/sqb_9/), accessed 6 March 2016.

<sup>342</sup> See: <http://www.bfdi.bund.de/DE/BfDI/DieBfDI/bfdi-node.html>, accessed 6 March 2016.

<sup>343</sup> Overview of the Census Legislation at the different levels: [http://www.zensus2011.de/DE/Infothek/Gesetze/Gesetze\\_node.html?gtp=3066382\\_list%253D2](http://www.zensus2011.de/DE/Infothek/Gesetze/Gesetze_node.html?gtp=3066382_list%253D2), accessed 6 March 2016.

<sup>344</sup> Destatis, *Behinderte Menschen* [disabled people] [www.destatis.de/DE/ZahlenFakten/GesellschaftStaat/Gesundheit/Behinderte/BehinderteMenschen.html](http://www.destatis.de/DE/ZahlenFakten/GesellschaftStaat/Gesundheit/Behinderte/BehinderteMenschen.html), accessed 24 January 2016.

<sup>345</sup> Germany, Social Code (*Sozialgesetzbuch*) No IX, [www.gesetze-im-internet.de/sqb\\_9/](http://www.gesetze-im-internet.de/sqb_9/), accessed 6 March 2016.

While affiliation to a religion is not collected in statistics, the collection of data on membership of the Christian churches in Germany is widespread. These data are collected by employers and are related to the state taxation system, as the state taxation authorities collect church tax. Church tax laws are adopted and supervised by the Länder.<sup>346</sup> However, people who are affiliated to other/no religious communities are not included in this dataset.

"Migration background", "nationality" or "language spoken inside the family" function as ethnic markers and proxies for "ethnic" or "racial" origin in the German context, due to the experience of the holocaust. In 2005 the category of "migration background" was introduced into official statistics, specifying and adding to the old ethnically coded system of "German" (ethnicity) and "Foreigner" (non-German ethnicity). The definition of "migration background" is not the same everywhere and most of the available statistics still use the distinction of German and foreign citizenship.<sup>347</sup> The Länder and the Federal level agreed to follow the 2011 census definition, which says that those considered to have a migration background are foreigners or those who were born in a foreign country and who migrated to Germany after 31 December 1955 or those who have a parent who was born in a foreign country and migrated to Germany after 31 December 1955.<sup>348</sup> The cut-off year of 1955 is a proxy for ethnicity, as it is the year of the first guest worker agreement.<sup>349</sup> This cut-off date means that 12-14 million ethnic German refugees have been excluded from the category of "migration background". Long-settled minorities, such as people of African descent or German Sinti, are also not covered by the current definitions, with the effect of making the forms of "ethnic" or "racial" discrimination they experience invisible.

### 3. Practical implementation

There are no official or formal policy measures related to equality data and there is no centralised structure or institution responsible for equality data collection. The main institutions responsible for data collection in general are the Federal Statistical Office and the Statistical Offices of the Länder. The Federal Statistical Office provides the official link from national surveys to EU-wide surveys, such as the Labour Force Survey (LFS)<sup>350</sup> and EU-SILC.<sup>351</sup> The LFS is a continuous quarterly survey and access to micro data is only available for scientific purposes, individuals cannot be granted direct data access.

<sup>346</sup> Federal Ministry of Finance, *Steuern von A bis Z* [Taxes from A to Z], [http://www.bundesfinanzministerium.de/Content/DE/Downloads/Broschueren\\_Bestellservice/2013-09-24-steuern-von-a-z.pdf?\\_\\_blob=publicationFile&v=8](http://www.bundesfinanzministerium.de/Content/DE/Downloads/Broschueren_Bestellservice/2013-09-24-steuern-von-a-z.pdf?__blob=publicationFile&v=8), accessed 6 March 2016.

<sup>347</sup> Office of the Minister for Migration, Refugees and Integration (2009) *Erster Integrationsindikatorenbericht: Erprobung des Indikatorensets und Bericht zum bundesweiten Integrationsmonitoring* [First Indicator Report: Testing the indicator set and report on federal integration monitoring], <http://www.bundesregierung.de/Content/DE/Publikation/IB/2009-07-07-indikatorenbericht.html>, accessed 24 January 2016.

<sup>348</sup> Translated by the authors, *Zensus 2011 - Bevölkerung & Haushalte Übersicht über Merkmale und Merkmalsausprägungen, Definitionen* [Census 2011, Populations and households. Overview of characteristics, features and definitions], [http://www.zensus2011.de/SharedDocs/Downloads/DE/Merkmale/Merkmale\\_Bevoelkerung.pdf?\\_\\_blob=publicationFile&v=15](http://www.zensus2011.de/SharedDocs/Downloads/DE/Merkmale/Merkmale_Bevoelkerung.pdf?__blob=publicationFile&v=15), accessed 6 March 2016.

<sup>349</sup> Landeszentrale für politische Bildung, *Erstes "Gastarbeiter-Abkommen" vor 55 Jahren* [First "guestworker agreement" 55 years ago], <http://www.bpb.de/themen/IEX7W3>, accessed 9 January 2016.

<sup>350</sup> The Federal Statistical Office provides data for EU-LFS, processed by Eurostat. Part of the data can also be supplied by equivalent information from alternative sources, such as administrative registers (mainly social insurance records and population registers). Data is available at the GESIS-website of the Leibniz-Institute, see: Leibniz-Institute for Social Science, About the EU-LFS, <http://www.gesis.org/unser-angebot/daten-analysieren/amtliche-mikrodaten/european-microdata/eu-lfs/about-the-eu-lfs/>, accessed 6 April 2016.

<sup>351</sup> Living in Europe is the German survey of the European-wide survey, European Union Statistics on Income and Living Conditions (EU-SILC). The EU Directive 1177/2003, in combination with the Federal Statistics Law, constitutes the legal basis and is the standard source for measuring poverty, see: *Leben in Europa (EU-SILC) - Einkommen und Lebensbedingungen in Deutschland und der Europäischen Union* [Living in Europe (EU-SILC) - Income and living conditions in Germany and the European Union], <http://www.destatis.de/DE/Publikationen/Thematisch/EinkommenKonsumLebensbedingungen/LebeninEuropa/EinkommenLebensbedingungen.html>, accessed 24 January 2016.

EU-SILC is an annual survey and data are published in an annual report. The data for the LSF and EU-SILC are based on the Micro Census and use its definitions of "migration background". The Socio-Economic Panel (SOEP)<sup>352</sup> conducts the longitudinal study, Living in Germany, and offers micro data for research in the social, economic and behavioural sciences. Its migration sample includes a variety of advanced proxies for ethnicity, including migration background. The European Social Survey (ESS)<sup>353</sup> represents the most comprehensive equality-oriented data available for Germany. It not only includes multiple questions on origin, but also questions on experiences of discrimination on multiple grounds. Data for Germany are published on the official international ESS website.

Data which can be labelled as "equality data" are also collected by a variety of other actors in different databases and registers. In these registers "migration background" is not used consistently and other proxies that translate "ethnicity" as "nationality" or "language spoken inside the family" are in operation. The databases and registers are used for integration monitoring in Germany and include the basis for potential equality data collection. More data on specific characteristics can be found in the following registers and databases.

- **Trans\*people:** change of name and gender are regulated in the Civil Status Act and the number of registered trans\*people is published in the annual overviews of the district courts.<sup>354</sup>
- **Same-sex partnerships:** in 2001 the law on same-sex partnership was enacted. The electronic civil status register<sup>355</sup> was introduced in 2009. The registry offices hold a marriage register,<sup>356</sup> a civil partnership register,<sup>357</sup> a birth register<sup>358</sup> and a death register.<sup>359</sup>
- **Disability:** main data are collected via the Micro Census,<sup>360</sup> the Information System of Federal Health Monitoring<sup>361</sup> and the labour agency.<sup>362</sup> The statistical office registers disabled people receiving benefits according to Social Code XII.<sup>363</sup>

There is neither a centralised register of people and their "ethnic" or "racial" background nor one with the proxy "migration background". There is the Central Register of Foreign Nationals (AZR) and the Visa Register of the Foreign Office, where all foreign nationals living in Germany or applying for a visa or asylum in Germany are registered.<sup>364</sup> Other

<sup>352</sup> SOEP is a joint project of the Institute for Employment Research (IAB) and the German Socio-Economic Panel Study (SOEP), Leben in Deutschland [Living in Germany], <http://www.leben-in-deutschland.info/>, accessed 24 January 2016.

<sup>353</sup> Data are gathered by private German opinion survey firms (infas - Institute for applied social science / TNS Infratest) and is overseen by a national academic coordination team: Über den European Social Survey, <http://www.europeansocialsurvey.org/about/country/germany/index.html>, accessed 8 April 2016.

<sup>354</sup> Germany, Civil Status Act (*Personenstandsrecht*, *PStG*), [http://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=86645&p\\_country=DEU&p\\_count=1231&p\\_classification=01&p\\_classcount=87](http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=86645&p_country=DEU&p_count=1231&p_classification=01&p_classcount=87), accessed 24 January 2016, and Transgender Law (TSG) Art. 1 and 8.

<sup>355</sup> Art. 3 PStG new.

<sup>356</sup> Art. 15 PStG new.

<sup>357</sup> Art. 17 PStG new.

<sup>358</sup> Art. 21 PStG new.

<sup>359</sup> Art. 31 PStG new.

<sup>360</sup> Federal Statistical Office, Disabled Persons, <http://www.destatis.de/DE/ZahlenFakten/GesellschaftStaat/Gesundheit/Behinderte/BehinderteMenschen.html>, accessed 6 March 2016.

<sup>361</sup> The Information System of the Federal Health Monitoring, [http://www.gbe-bund.de/gbe10/pkg\\_isgbe5.prc\\_isgbe?p\\_uid=gast&p\\_aid=0&p\\_sprache=E](http://www.gbe-bund.de/gbe10/pkg_isgbe5.prc_isgbe?p_uid=gast&p_aid=0&p_sprache=E), accessed 6 March 2016.

<sup>362</sup> Social Code (*Sozialgesetzbuch*) No IX, [http://www.gesetze-im-internet.de/sgb\\_9/](http://www.gesetze-im-internet.de/sgb_9/), accessed 6 March 2016.

<sup>363</sup> Federal Statistical Office, Social welfare in a nutshell. Benefits according to the Social Code, <http://www.destatis.de/DE/ZahlenFakten/GesellschaftStaat/Soziales/Sozialleistungen/Sozialhilfe/Sozialhilfe.html>, Social Code XII, Chapters 5-9, [http://www.gesetze-im-internet.de/sgb\\_9/\\_2.html](http://www.gesetze-im-internet.de/sgb_9/_2.html)

<sup>364</sup> Legal Basis: *Gesetz über das Ausländerzentralregister (AZRG)*, *Verordnung zur Durchführung des Gesetzes über das Ausländerzentralregister (AZRG-DV)*, *Allgemeine Verwaltungsvorschrift zum AZRG und zur AZRG-DVDV Aufenthaltsgesetz - AufenthG (Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet)*, *Asylverfahrensgesetz (AsylVfG)*.



databases and registers, some feeding into the integration monitoring, are also relevant for equality data collection.

- Federal, regional and local public administrations seek to achieve diversity among their employees. To do this recruitment practices are monitored, but no systematic or unified datasets at the Federal level are available.
- Crime statistics (PKS) do not contain information on migration background in Germany, but only show the number of foreign nationals.
- Health data are generated by the Micro Census and the health reporting system, supplemented by the children and youth health survey (KiGGS), all using the category of "migration background".<sup>365</sup>
- Data on income and employment are available via the Micro Census. Data on welfare are available through the Federal Bureau of Statistics and the Federal Employment Agency. Neither of these differentiate according to "migration background", but instead according to nationality.<sup>366</sup>
- Education is solely the responsibility of the Länder and the official school statistics count students as "German" and "non-German". It was agreed in future to count on the basis of "migration background". The Länder ministers of culture developed a "core dataset" (KDS),<sup>367</sup> including (1) nationality of the student, (2) country of birth, (3) year when he/she moved to Germany (4) and the language spoken inside the family.<sup>368</sup>
- Data on vocational training are also available from professional training statistics, the Micro Census and from the Federal Employment Agency. Except for the Micro Census all data are categorised according to nationality.<sup>369</sup>
- The German Federal Youth and Care Statistics cover migration history with a question on whether at least one parent was born in a foreign country and which language is spoken inside the family. The nationality of the parents is not relevant.<sup>370</sup>

Data based on the census are collected irregularly.<sup>371</sup> Micro Census data are collected annually from 1% of households.<sup>372</sup> Other statistics vary from Land to Land, but normally registers are updated annually. Data are directly accessible via the websites of the Federal Statistical Office and the statistical offices of the Länder. The statistics portal [www.statistikportal.de](http://www.statistikportal.de) offers direct access to data which are not disaggregated.

Data on discrimination are not collected consistently and NGOs do not play a role in data collection at national level, although there have been attempts to establish a national discrimination register or centralised database.

#### 4. Key issues

There has been no public or wider debate on the collection of equality data in Germany. There is a strong sense of rejection of the collection of sensitive data, such as ethnic affiliation, religion, skin colour, sexual orientation or income. In German society two opposing positions can be identified: those in favour of equality data collection, calling for the inclusion of skin colour in the data collection system, such as the Black German community, and those strongly opposing ethnic data collection, because of the holocaust

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<sup>365</sup> Ibidem.

<sup>366</sup> Ibidem.

<sup>367</sup> 3<sup>rd</sup> integration report of the Länder, 2011-2013.

<sup>368</sup> Ibidem.

<sup>369</sup> First report on integration indicators (2009).

<sup>370</sup> 3<sup>rd</sup> integration report of the Länder, 2011-2013.

<sup>371</sup> Statistical Offices, History of Censuses in Germany, [http://www.zensus2011.de/DE/Zensus2011/Geschichte/Geschichte\\_node.html](http://www.zensus2011.de/DE/Zensus2011/Geschichte/Geschichte_node.html), accessed 6 March 2016.

<sup>372</sup> Federal Statistical Office, Explanations of the Micro Census, Labour Survey, <https://www.destatis.de/DE/ZahlenFakten/GesamtwirtschaftUmwelt/Arbeitsmarkt/Methoden/Mikrozensus.html>, accessed 6 March 2016.

experience of their group, such as the German Sinti who campaign for crime and ethnicity to be disconnected. The German police have used illegal registers on Sinti for a long time to continue their persecution as criminals after the end of the Third Reich.

After the change to the citizenship law, newly naturalised citizens and their needs were not detectable in the official statistics. This highlighted existing problems in planning and in equality-oriented service delivery for minority groups in general. It becomes even more complex when dealing with multiple discrimination and when the data situation on other grounds, such as sexual orientation, trans\*people or disabilities, show similar weaknesses. It points to more strategic and methodological problems in research and data collection. There are definition and access problems in Germany when it comes to sexual orientation, trans\*people, religion or ethnicity in a situation where those groups still fear discrimination.

There are some best practices identifiable, which can provide possible solutions for definition and access problems.

The "national minorities" in Germany, as defined by the Council of Europe, have been living on German soil for centuries and are defined as language groups, therefore their languages are protected as well. For them there is no mechanism of "third-party" identification, but only one of self-declaration of belonging to such a language group.<sup>373</sup> This could be used as a practical example of self-identification in equality data collection for Germany.

The development cooperation of the German government understands gender equality and respect for gender identity as a potential key to achieving the objective of a human-rights-based, socially equitable and sustainable development of democratic societies. In a strategy paper the Ministry of Development plans to monitor data on gender and sexual orientation when it comes to project funding. This demonstrates the necessity for equality data collection in Germany itself.<sup>374</sup>

In 2015 the Anti-Discrimination Agency (ADS) carried out the largest ever survey on discrimination experiences in Germany.<sup>375</sup> In the preparation phase the ADS initiated an intensive consultation with NGOs from the different fields of discrimination. The "data subjects" were not only involved in generating data, but also in conceptualising the questionnaire. The survey included experimental questions on self-identification of discrimination grounds. These questions will be included in the next German Socio-economic Panel, a wide-ranging representative longitudinal study of private

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<sup>373</sup> Ministry of the Interior, National Minorities, [http://www.bmi.bund.de/DE/Themen/Gesellschaft-Verfassung/Nationale-Minderheiten/nationale-minderheiten\\_node.html](http://www.bmi.bund.de/DE/Themen/Gesellschaft-Verfassung/Nationale-Minderheiten/nationale-minderheiten_node.html), accessed 24 January 2016.

<sup>374</sup> Federal Ministry for Economic Cooperation and Development (BMZ) (2011a): *Menschenrechte in der deutschen Entwicklungspolitik* [Human Rights in German Development Policy]. Concept. BMZ-Strategy paper No. 4/2011, Bonn, [http://www.bmz.de/de/mediathek/publikationen/archiv/themen/menschenrechte/Strategiepapier303\\_04\\_2011.pdf](http://www.bmz.de/de/mediathek/publikationen/archiv/themen/menschenrechte/Strategiepapier303_04_2011.pdf), accessed 19 March 2016.

<sup>375</sup> Federal Anti-discrimination Agency, Online Survey on Discrimination, [http://www.antidiskriminierungsstelle.de/DE/ThemenUndForschung/Projekte/Umfrage\\_Diskriminierung\\_in\\_Deutschland/Umfrage\\_node.html](http://www.antidiskriminierungsstelle.de/DE/ThemenUndForschung/Projekte/Umfrage_Diskriminierung_in_Deutschland/Umfrage_node.html), accessed 19 March 2016.



## 12. Greece

**Expert: Varvara Lalioti**

### 1. Relevant legal framework

In contrast to the Hellenic Statistical Authority's (ELSTAT) duty to produce official statistics, the national legislation (Law 3832/2010)<sup>376</sup> that describes the principles and obligations of ELSTAT, as well as the obligations of the agencies and institutions of the wider public and private sectors with regard to statistical data, makes no explicit reference to the state's/public authorities' obligation to collect equality data. In a similar vein, the main law for the promotion of the principle of equal treatment, regardless of racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation (Law 3304/2005),<sup>377</sup> includes no reference to the issue of equality data collection.

Furthermore, as a general rule, equality data are regarded as "sensitive" personal data, that is data referring to racial or ethnic origin, political opinions, religious or philosophical beliefs, membership of a trade union, health, social welfare and sexual life, criminal charges or convictions, as well as membership of societies dealing with the aforementioned areas (Article 2 of Law 2472/1997).<sup>378</sup> More specifically, pursuant to Article 7 of Law 2472/1997, the collection and processing of "sensitive" data, as well as the establishment and operation of the relevant file, is permitted by the Hellenic Data Protection Authority (HDPa) only when one or more of the following conditions are met:

- a) The data subject has given her/his written consent, unless such consent has been extracted in a manner contrary to the law or *contra bonos mores*, or if the law provides that any consent given may not lift the relevant prohibition.
- b) Processing is necessary to protect the vital interests of the data subject or the interests of a third party provided for by the law, if s/he is physically or legally incapable of giving her/his consent.
- c) Processing relates to data made public by the data subject or is necessary for the recognition, exercise or defence of rights in a court of justice or before a disciplinary body.
- d) Processing relates to health matters and is carried out by a health professional, subject to the obligation of professional secrecy or the relevant codes of conduct, provided that such processing is necessary for the purposes of preventive medicine, medical diagnosis, the provision of care or treatment or the management of healthcare services. Processing is carried out by a Public Authority and is necessary for the purposes of:
  - national security;
  - criminal or correctional policy, in which case it pertains to the detection of offences, criminal convictions or security measures;
  - protection of public health; and
  - public control of fiscal or social services.
- e) Processing is carried out exclusively for research and scientific purposes, provided that anonymity is maintained and all necessary measures for the protection of the persons involved are taken.

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<sup>376</sup> Greece, Greek Statistical System. Establishment of the Hellenic Statistical Authority (ELSTAT) as an Independent Authority (*Ελληνικό Στατιστικό Σύστημα. Σύσταση της Ελληνικής Στατιστικής Αρχής ως Ανεξάρτητης Αρχής*), Official Government Gazette, Issue no. 38, Volume A, 9 March 2010. Date of adoption: 9 March 2010.

<sup>377</sup> Greece, Application of the Principle of Equal Treatment Irrespective of Racial or Ethnic Origin, Religion or Belief, Disability, Age or Sexual Orientation (*Εφαρμογή της Αρχής της Ίσης Μεταχείρισης Ανεξαρτήτως Φυλετικής ή Εθνοτικής Καταγωγής, Θρησκευτικών ή Άλλων Πεποιθήσεων, Αναπηρίας, Ηλικίας ή Γενετήσιου Προσανατολισμού*), Official Government Gazette, Issue 16, Volume A, 27 January 2005.

<sup>378</sup> Greece, Protection of Individuals with Regard to the Processing of Personal data (*Προστασία του Ατόμου από την Επεξεργασία Δεδομένων Προσωπικού Χαρακτήρα*), Official Government Gazette, Issue no. 50. Volume A, 10.04.1997. Date of adoption: 10 April 1997.

- f) Processing concerns data pertaining to public figures, provided that such data are in connection with the holding of public office or the management of third parties' interests, and is carried out solely for journalistic purposes. The HDPA may grant a permit only if such processing is absolutely necessary in order to ensure the right to information on matters of public interest, as well as within the framework of literary expression and provided that the right to protection of private and family life is not violated in any way whatsoever.

National law also prohibits the collection of data in conformity with Article 8.1 of the Data Collection Directive 95/46/EC.<sup>379</sup> Although the exemptions described in Articles 8.2-8.4 of the Directive apply, national law provides more details on the aforementioned exemptions. Lastly, given that employers have a legal obligation to report to the Greek authorities<sup>380</sup> (the competent agencies of the Ministry of Employment) the beginning and end of the employment relationship with their employees (including employees with non-Greek citizenship), employers report data on employees' citizenship (citizenship is utilised as a proxy for ethnic origin). Article 8 of Law 3144/2013<sup>381</sup> explicitly states that it is forbidden to record or process the personal data of employees. An exception is made for medical data, but only in the case that this is absolutely necessary: for instance, in order to promote health and safety in the workplace.

| Consent | Employment       | Health/life      | Public | Members | Legal claim | Medicine | Public interest – Other |
|---------|------------------|------------------|--------|---------|-------------|----------|-------------------------|
| X       | X <sup>382</sup> | X <sup>383</sup> | X      |         | X           | X        | X                       |

## 2. Definitions and categories used to collect equality data

Due to the lack of systematic collection of equality data at the national level, there are few definitions and categories to this end.

**Disability:** The collection of data on disability is more the exception than the rule. For instance, data on disability are included in two LFS ad hoc modules, 'Employment of People with Health Problems or Disability' (Ad hoc 2002)<sup>384</sup> and 'Survey on Employment of People with Health Problems' (Ad hoc 2011).<sup>385</sup> Both utilise the survey methodology,

<sup>379</sup> See Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the Protection of Individuals With Regard to the Processing of Personal Data and on the Free Movement of Such Data, *Official Journal L 281, 23/11/1995 P. 0031 - 0050*.

<sup>380</sup> See Greece, Ministerial Decision 5072/6/25 February 2013 on the Redefinition of the Terms and Conditions for the Electronic Submission of Forms Concerning the Competences of the Labour Inspectorate (SEPE) and the Manpower Employment Organisation (OAED), in Accordance with Subparagraphs IA. 10, 11, 12, 13 and 14 of Article 1 of Law 4093/2012 (*Επανακαθορισμός των Όρων και Προϋποθέσεων Ηλεκτρονικής Υποβολής Εντύπων Αρμοδιότητας Σώματος Επιθεώρησης Εργασίας (ΣΕΠΕ) και Οργανισμού Απασχολήσεως Εργατικού Δυναμικού (ΟΑΕΔ), σύμφωνα με τις Υποπαραγράφους ΙΑ. 10, 11, 12, 13 και 14 του άρθρου πρώτου του νόμου 4093/2012*), *Official Government Gazette*, Issue no. 449, Volume B.

<sup>381</sup> Greece, Social Dialogue for the Promotion of Employment and Social Protection, and Other Provisions (*Κοινωνικός Διάλογος για την Προώθηση της Απασχόλησης και την Κοινωνική Προστασία και Άλλες Διατάξεις*), *Official Government Gazette*, Issue no. 111, Volume 8, 8 May 2013.

<sup>382</sup> The "sensitive" data collected by employers concern citizenship (used as a proxy for ethnic origin) and health.

<sup>383</sup> No specific reference is made to the data subject's consent.

<sup>384</sup> The link provided by ELSTAT for this module is (in Greek): <http://www.statistics.gr/el/statistics/-/publication/SJO12/2002>.

<sup>385</sup> The link provided by ELSTAT for this module is (in Greek): <http://www.statistics.gr/el/statistics/-/publication/SJO24/->.

so as to discuss mainly accidents at work and work-related health problems. The use of the term “disability” is unclear and confusing.

Furthermore, an employment quota law (Law 2643/1998,<sup>386</sup> as amended by Laws 2956/2001,<sup>387</sup> 3227/2004,<sup>388</sup> and 3454/2006)<sup>389</sup> targets vulnerable groups of the population, including disabled people or the relatives of a disabled person. In theory, companies also have the obligation to inform the Ministry of Labour of the total number of their employees (this includes the number of people with disabilities who work at their premises). Nonetheless, there are no sanctions if companies do not hire people with disabilities or fail to report the exact number of them.

Overall, data pertaining to disability are collected on the basis of: self-identification; third party categorisation (by means of an evaluation on the degree of disability by medical professionals); proxies (work limitations and health are often used as proxies for disability); and official documents, such as a certificate of disability that is granted by committees responsible for determining the disability level of individuals.

**Age:** Data on age are usually collected in all national surveys and administrative processes, on the basis of self-identification and official documents, such as an identity card, passport or birth certificate.

**Religion (or belief):** In the framework of major national official surveys, no data are collected with regard to religion (or belief). The Ministry of Education is in a position to collect data on the religious beliefs of students at the primary and secondary education level, on the basis of voluntary self-identification. However, in practice the collection of these data takes place on an ad hoc basis and largely depends on the discretion of school managers. Furthermore, until 2001, when the Council of State declared that the inclusion of religion on identity cards is unconstitutional, data on the religious beliefs of citizens were included in identification cards and formed part of the data kept by the municipal registers. Overall, data pertaining to religion (or belief) are collected mainly on an ad hoc basis (mainly by means of the method of self-identification).

**Ethnic or racial origin:** Data on ethnic or racial origin are inferred from data on citizenship and country of origin. For instance, the broad categories used by ELSTAT in the 2011 Population-Housing Census are “Greek”<sup>390</sup>, “EU countries”, “European countries outside the EU”, “Africa”, “Caribbean, South or Central America”, “North America”, “Asia”, “Oceania” and “Without citizenship or citizenship not specified or not declared”. The Office of the Greek Ombudsman collects ethnic origin data on the basis of official documents that include information on citizenship (e.g. passports). Next, this data is classified under broad categories, such as “Africa”, “Europe”, “Asia”, etc. According to the Ombudsman’s 2013 special report on racist violence in Greece,<sup>391</sup> the victims of racist violence come from Asia (51%), “Africa” (24%), “Europe” (12%) or their country of origin is unknown (13%). Data pertaining to ethnic or racial origin are collected on the basis of self-identification, third-party categorisation, proxies and official documents. For instance, almost all people who self-identify as Roma are also categorised by third

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<sup>386</sup> Greece, Care for the Employment of Persons in Special Categories and Other Provisions (*Μέριμνα για την Απασχόληση Προσώπων Ειδικών Κατηγοριών και Άλλες Διατάξεις*), Official Government Gazette, Issue 220, Volume A, 28 September 1998.

<sup>387</sup> Greece, Restructuring the Manpower Employment Organisation (OAED) and Other Provisions (*Αναδιάρθρωση ΟΑΕΔ και Άλλες Διατάξεις*), Official Government Gazette, Issue 258, Volume A, 6 November 2001.

<sup>388</sup> Greece, Measures to Combat Unemployment and Other Provisions (*Μέτρα για την Αντιμετώπιση της Ανεργίας και Άλλες Διατάξεις*), Official Government Gazette, Issue 31, Volume A, 9 February 2004.

<sup>389</sup> Greece, Supporting Family and Other Provisions (*Ενίσχυση της Οικογένειας και Λοιπές Διατάξεις*), Official Government Gazette, Issue 75, Volume A, 7 April 2006.

<sup>390</sup> People with dual citizenship are also included (Greek and other).

<sup>391</sup> See Office of the Greek Ombudsman (2013), *Special Report. Combating Racist Violence in Greece*, Athens, September, p. 83 (in Greek).

parties (e.g. researchers/interviewers) as Roma. This categorisation is based on the external characteristics of the Roma (e.g. residence in a Roma settlement). Moreover, as mentioned above, citizenship and country of birth are used as proxies for ethnic or racial origin. Lastly, in the course of many of the functions carried out by the public administration the collection of data on ethnic or racial origin is also based on official documents, such as identity card, passport or birth certificate.

**Sexual orientation:** Data on sexual orientation are rarely collected (exclusively ad hoc and on a project basis). Self-identification is the method used for the collection of such data.

**Gender identity:** Data pertaining to gender identity are collected on the basis of self-identification and official documents, such as identity card, passport or birth certificate. According to national legislation, individuals who have undergone sex-change surgery can change the gender (and the name) ascribed to them at birth on their personal documents (e.g. birth certificate etc.).<sup>392</sup> However, if gender redefinition has not been preceded by sex-change surgery, then the Civil Code does not permit the change of gender in personal documents. ELSTAT collects data that consider only two genders: male and female.

**Multiple grounds:** In practice, no data are collected on multiple grounds. A rare exception may be found in the Racist Violence Recording Network's (RVRN) 2014 annual report where it is, inter alia, mentioned, that in three out of the 32 incidents of racist violence that were committed against LGBTQI people, the victims were foreigners who were targeted because of both their sexual orientation and their ethnic origin or skin colour.<sup>393</sup>

### 3. Practical implementation

The main institutions/bodies that are involved in the collection of equality data in Greece are:

- **The Hellenic National Statistical Authority (ELSTAT):** More specifically, the main sources of equality data in Greece are the Labour Force Survey (LFS)<sup>394</sup> and the Statistics on Income and Living Conditions (EU-SILC) survey.<sup>395</sup> The LFS estimates are published on a quarterly and monthly basis. The EU-SILC takes place annually. A limited amount of information can also be derived from the Population and Housing Census<sup>396</sup> which is conducted by ELSTAT once every 10 years. The LFS, the EU-SILC survey and the Population and Housing Census all collect data on age. ELSTAT has also conducted ad hoc surveys which cover age, e.g. research on labour market access for pensioners. As far as the ground of ethnic/racial background is concerned, the LFS, EU-SILC and Population and Housing Census use citizenship/country of birth as a proxy for ethnic/racial background. Furthermore, data on foreign origin and disability are included in LFS ad hoc modules. Broadly speaking, the major national official surveys do not collect data

<sup>392</sup> See Greece, Article 14 of Law 2503/1997 on the Management, Organization, Personnel of the Prefecture, Regulation of Issues Concerning Local Authorities and Other Provisions (Διοίκηση, Οργάνωση, Στελέχωση της Περιφέρειας, Ρύθμιση Θεμάτων για την Τοπική Αυτοδιοίκηση και Άλλες Διατάξεις), Official Government Gazette, Issue 107, Volume A, 30 May 1997.

<sup>393</sup> See Racist Violence Recording Network (RVRN) (2014), *2014 Annual Report*, p. 5.

<sup>394</sup> See e.g. the press release for November 2015 (in English), accessible at <http://www.statistics.gr/documents/20181/4aee5e0e-d486-4669-b95f-2bbd94fb4cc5>. Moreover, see <http://www.statistics.gr/el/statistics/-/publication/SJO01/-/%20for%20information> (in Greek) on the Έρευνα Απασχόλησης Εργατικού Δυναμικού (Labour Force Survey) concerning the last three months of the year 2015.

<sup>395</sup> See the following link: <http://www.statistics.gr/statistics/-/publication/SFA10/-> for questionnaires etc. utilised in the framework of the research on the Εισόδημα και Συνθήκες Διαβίωσης των Νοικοκυριών (SILC) 2015 (in Greek).

<sup>396</sup> See the following link (in Greek): <http://www.statistics.gr/2011-census-pop-hous>.

on religion, sexual orientation, gender identity and multiple grounds. The confidential data that are transmitted by the agencies of the Hellenic Statistical System (ELSS) to ELSTAT must be used exclusively for statistical purposes and the only people who have the right to have access to this data are the personnel engaged in this task, who are appointed by an act of the President of ELSTAT.<sup>397</sup> Moreover, as a general rule, researchers conducting statistical analysis for scientific purposes have the right to access data which allow indirect identification of statistical units.

- **Other public authorities:** Law 3304/2005,<sup>398</sup> the key law regarding the equal treatment principle, entrusted the promotion of this principle to three administrative bodies (equality bodies): a) the Office of the Greek Ombudsman; b) the Labour Inspectorate (SEPE); and c) the Equal Treatment Committee.<sup>399</sup> Among these bodies, the Office of the Greek Ombudsman is the most active in equality data collection for all grounds. The data collected from the Office of the Greek Ombudsman largely draws on citizens' complaints about discriminatory behaviour, but also utilises information from secondary sources, such as NGOs, the media and the Hellenic Police. The data are included in the Ombudsman's annual special reports on equal treatment, which have been published since 2005. The list of public authorities which collect equality data for various (mainly administrative) purposes is nonetheless quite long and includes, among others: the Ministry of Labour; the Ministry of Interior; the newly-created police agencies against racist violence; the Pedagogical Institute of Greece; the National Commission for Human Rights; the Management Organisation Units of the Regions; decentralised administrations and regional authorities, especially in regions that are characterised by a relatively high percentage of migrants or wherein previous censuses have shown high concentrations of Roma populations. The data collected concern age, citizenship/country of origin and religion. As a general rule, access to the data depends upon the discretionary power of the authorities and may often be denied.
- **NGOs:** Although not all organisations which are active in the anti-discrimination field collect equality data, others do (e.g. Doctors without Borders,<sup>400</sup> Lighthouse for the Blind in Greece,<sup>401</sup> Efxini Poli<sup>402</sup> and the RVRN)<sup>403</sup>. The data collected are often published (there is no general rule, however). For instance, the RVRN collects data on experiences of racist violence through interviews with victims and includes these data in its annual reports.<sup>404</sup>

Overall, equality data are published so as to make crimes/discriminatory activities related to grounds such as ethnic/racial origin, sexual orientation, gender identity and other grounds of discrimination more visible.

#### 4. Key issues

Key issues with regard to equality data collection in Greece include, inter alia, the following:

<sup>397</sup> See Article 8 of Law 3832/2010.

<sup>398</sup> See Law 3304/2005, Official Government Gazette 16A/27 January 2005.

<sup>399</sup> See Balourdos, D. and Mouriki, Al. (eds) (2012), *Combating discrimination in Greece. State of the art, challenges and policy interventions*, Athens: Papazisis Publishers, p. 87.

<sup>400</sup> See the following link: <http://www.doctorswithoutborders.org/country-region/greece>.

<sup>401</sup> See the following link: <http://www.fte.org.gr/index.php/en/>.

<sup>402</sup> See the following link: <http://www.efxini.gr/who-we-are/what-is-eos>.

<sup>403</sup> See the following link: <http://rvrn.org/category/english/>.

<sup>404</sup> See the following link: <http://rvrn.org/category/press-releases/page/3/>, for the RVRN's 2014 Annual Report.

- The use of the term “citizenship” as a proxy for ethnic/racial background is problematic, as reflected, for instance, in the fact that a number of Greek Roma have no proof of citizenship.<sup>405</sup> Data on ethnic and racial background are regarded as particularly sensitive “national” data, the collection and processing of which might potentially threaten the idea of Greece as a unitary nation-state.
- The efforts of the Greek state to collect ‘appropriate information, including statistical and research data’ (Article 31 of the UN CRPD) on people with disabilities remain minimal.<sup>406</sup>
- The debate on equality data collection at the national level has also been minimal. The establishment of the Observatory on Combating Discrimination<sup>407</sup> in 2011, within the framework of the National Centre for Social Research (EKKE),<sup>408</sup> was the first serious attempt to put the issue of equality data collection at the centre of public debate in Greece.
- Civil society organisations representing grounds/community groups targeted in this research are not characterised by a clear-cut stance towards data collection and processing.
- The equality data that are collected in Greece are inadequate, come from a variety of sources and are far from homogeneous with respect to definitions and data collection methods. Furthermore, attempts to evaluate and improve the existing data collection methods have been hindered by the severe effects of the recent crisis,<sup>409</sup> as reflected, for instance, in the lack of resources, both financial and human. In this context, the equality data that are collected in Greece are hardly comparable to data from other EU countries.

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<sup>405</sup> See Hormovitis, D. (2013), *FRA Online Survey. Mapping Data Sources on Roma*, September (Deliverable 2. Summary Report), p. 6.

<sup>406</sup> See National Federation of People with Disabilities (2012), *Handbook on issues of discrimination and reasonable adjustments for employees with disabilities*, Athens, December, p. 18 (in Greek).

<sup>407</sup> See the following link: [http://ekke.gr/ocd/?page\\_id=33](http://ekke.gr/ocd/?page_id=33).

<sup>408</sup> See the following link: <http://www.ekke.gr/>.

<sup>409</sup> See Balourdos, D. and Mouriki, Al. (eds) (2012), *Combating discrimination in Greece. State of the art, challenges and policy interventions*, Athens: Papazisis Publishers.

## 13. Hungary

**Expert: Balázs Tóth**

### 1. Relevant legal framework

There is no separate law on equality data collection in Hungary, however, scattered across several parts of the legal system there are legislative norms both demanding and allowing the collection of such data.

The fundamental norm for data processing is the Data Protection Act<sup>410</sup> which provides that personal data relating to racial origin or nationality, religious or philosophical beliefs, sexual life, health and pathological addictions (like alcoholism) shall qualify as sensitive data. As a rule, these data can be processed based on the written consent of the data subject or if processing is necessary for the implementation of an international agreement; if prescribed by law in connection with the enforcement of fundamental rights; for reasons of national security or national defence or law enforcement purposes for the prevention or prosecution of criminal activities; if processing of data related to health, pathologic obsession or criminal record is ordered by an Act of Parliament for reasons of public interest.

The rules are in conformity with Article 8.1 of the Data Collection Directive 95/46/EC.<sup>411</sup> The scope of the exemptions is wider than in Article 8.2 of the Directive, as the protection of national security or national defence can also serve as the basis of processing sensitive data without the consent of the data subject, while processing data related to health or pathologic obsession – i.e. drug addiction or alcoholism – can be ordered for reasons of public interest in general, which is possible under Article 8.4 of the Directive.

| Consent | Employment | Health/life | Public | Members | Legal claim | Medicine | Public interest – Other |
|---------|------------|-------------|--------|---------|-------------|----------|-------------------------|
| X       | X          | X           | X      | X       | X           | X        | X                       |

Legislation on official statistics and on the National Census<sup>412</sup> constitutes the general legal framework allowing and demanding equality data collection. According to the Act on Statistics,<sup>413</sup> data related to racial, ethnic origin, political opinion and religion can only be collected on a voluntary basis, while the provision of data on health condition and sexual life may be prescribed by law. However, in both cases data must be collected in such a manner that they cannot be affiliated with the person concerned. The Population Census Act provides that data relating to health status, disability, religion (belonging to a certain religious community), mother tongue or ethnic origin (belonging to a national

<sup>410</sup> Hungary, Act CXII of 2011 on the Right of Informational Self-Determination and on Freedom of Information (2011. évi CXII. törvény az információs önrendelkezési jogról és az információszabadságról), [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A1100112.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1100112.TV), adopted on 11 July 2011.

<sup>411</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995L0046:en:HTML>).

<sup>412</sup> Hungary, Act CXXXIX of 2009 on the Population Census of 2011 (2009. évi CXXXIX. törvény a 2011. évi népszámlálásról), [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A0900139.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0900139.TV), adopted on 7 December 2009.

<sup>413</sup> Hungary, Act XLVI of 1993 on Statistics (1993. évi XLVI. törvény a statisztikáról), [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99300046.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99300046.TV), adopted on 27 April 1993.



minority) is voluntary. The methodology used in the course of the Census is self-identification. The Minority Act<sup>414</sup> provides that, 'Declaring affiliation with a minority is the individual's exclusive and inalienable right. No one may be obliged to make a declaration on the issue of affiliation with a minority, however, exercise of certain minority rights may depend upon the individual's declaration'.

There are also other laws allowing or demanding ethnic data collection. In public education, each school has to carry out a centrally organised competence assessment of students in the course of which they have to fill in a questionnaire using the methodology of third-party categorisation to estimate the proportion of Roma students taking part in the competence assessment. In addition, under Article 44/A of the National Public Education Act<sup>415</sup> a so-called Integrated Follow-up System has been established since 2014 in which data on children's ethnic affiliation can be registered and managed if the parents of the children concerned consent to this. Since 4 November 2014, the utilisation of the System has become obligatory.

As of May 2013, on the basis of the Act on the Promotion of Employment and the Support of the Unemployed,<sup>416</sup> data on the national minority of jobseekers must be registered by the National Employment Service on the basis of voluntary declaration. There is another register run by the national employment body, which may contain data related to the national minority of those taking part in programmes financed by the European Social Fund on the basis of voluntary declaration, in order make possible individual monitoring and examination of the lawfulness of the use of financial resources.<sup>417</sup>

## **2. Definitions and categories used to collect equality data**

### *Race or ethnicity*

There is no common or legal definition of race or ethnicity. There is, however, a definition of the concept of national minorities, which are ethnic groups resident in Hungary for at least one century, which are in a numerical minority compared with the overall population of the State and are distinguished from the rest of the population by their own language, culture and traditions and manifest a sense of collective affiliation that is aimed at the preservation of these and at the expression and protection of the interests of their historically established communities. The list of recognised minorities is to be found in Annex 1 of the Minority Act.

### *Perceived ethnicity*

There is no legal definition of perceived ethnicity or perceived origin, its legal status is controversial. (It is the question of whether or not A's perception of B's ethnicity is B's personal – and sensitive – data.)

### *Disability*

A person living with disability is anyone who has a significant or complete impairment of sensory - particularly sight, hearing - motor or intellectual functions, or who is substantially restricted in communication and is thereby placed at a permanent disadvantage regarding active participation in the life of society.<sup>418</sup>

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<sup>414</sup> Hungary, Act CLXXIX of 2011 on the Rights of Minorities (2011. évi CLXXIX. törvény a nemzetiségek jogairól), [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A1100179.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1100179.TV), adopted on 19 December 2011.

<sup>415</sup> Hungary, Act of CXC of 2011 on National Education (2011. évi CXC. törvény a nemzeti köznevelésről), [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A1100190.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1100190.TV), adopted on 19 December 2011.

<sup>416</sup> Hungary, Article 57/A. (2) k) of Act IV of 1991 (1991. évi IV. törvény a foglalkoztatás elősegítéséről és a munkanélküliek ellátásáról), [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99100004.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99100004.TV), adopted on 23 February 1991.

<sup>417</sup> Article 57/D. (2) ge) of Act IV of 1991.

<sup>418</sup> Hungary, Article 4 (a) of Act XXVI of 1998 on the Rights of Persons Living with Disability and Ensuring their Equality of Opportunities (1998. évi XXVI. törvény a fogyatékos személyek jogairól és esélyegyenlőségük biztosításáról), [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99800026.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99800026.TV), adopted on 1 April 1998.



### Religion

Definition of religious activity: an activity in connection with an ideology that is related to something supernatural, has systemic principles of belief, its tenets describe the whole of reality and has a bearing on the whole of human nature by having specific behavioural rules.<sup>419</sup>

### Sexual orientation

There is no legal definition of the concept.

## 3. Practical implementation

The Hungarian Central Statistical Office (HCSO), primarily through the National Census, collects data on age, ethnic origin, mother tongue, language used in the family and with friends (in order to map belonging to a certain national minority), type of disability, activity relating to which disability constitutes a barrier in everyday life, the data of commencement of the disability (in order to map disability), as well as affiliation to a certain religious community. The last National Census took place in 2011. The relevant census data on belonging to a national minority are available among regional data and in the publication entitled 'Data on belonging to a national minority' on the HCSO census website of.<sup>420</sup> Data on disability are available among regional data and in the publications entitled 'People living with disabilities' and 'Situation and social benefits of people living with disabilities' on the HCSO census website.<sup>421</sup> Data on religion are available among regional data and in the publication entitled 'Religion and religious communities' on the HCSO census website.<sup>422</sup> All the national data from the latest (2011) census are available in English.<sup>423</sup> Equality data collected through the LFS Survey (*Európai Közösség Munkaerő-felmérése*) include data on age and sex; these data are available in English.<sup>424</sup> Similar data are collected in the course of the EU-SILC surveys (*Háztartási Költségvetési és Életkörülmények Adatfelvétele*),<sup>425</sup> plus they contain information e.g. on the number of people who are disabled or incapable of work due to health reasons.

As regards the policy framework on ethnic data collection, the Decade of Roma Inclusion Programme Strategic Plan<sup>426</sup> and the National Social Inclusion Strategy<sup>427</sup> must be mentioned. Both of these foresee the introduction of general official ethnic data collection, particularly with regard to the management of social disadvantages and discriminatory phenomena. However, no effective measures have been taken to achieve this aim. Therefore currently there are two main sources of data related to ethnic minorities. One is the National Census and the other is the minority election register, but these two sources are not comparable. In public education there are other databases on ethnic identity, plus some proxies can also be used to assess the proportion of minority pupils in education (e.g. the number of socially disadvantaged and multiply disadvantaged children). However, none of the data provide a reliable source of reality for various reasons. Basically, because no definition of racial or ethnic origin exists,

<sup>419</sup> Hungary, Article 6 (3) of Act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities (2011. évi CCVI. törvény a lelkiismereti és vallásszabadság jogáról, valamint az egyházak, vallásfelekezetek és vallási közösségek jogállásáról), <http://net.jogtar.hu/jr/gen/getdoc2.cgi?docid=A1100206.TV>, adopted on 31 December 2011.

<sup>420</sup> [http://www.ksh.hu/nepszamlalas/tables\\_regional\\_00?lang=en](http://www.ksh.hu/nepszamlalas/tables_regional_00?lang=en); [www.ksh.hu/nepszamlalas/tablak\\_nemzetiseg](http://www.ksh.hu/nepszamlalas/tablak_nemzetiseg), Hungarian.

<sup>421</sup> [www.ksh.hu/nepszamlalas/tables\\_regional\\_00?lang=en](http://www.ksh.hu/nepszamlalas/tables_regional_00?lang=en); [www.ksh.hu/nepszamlalas/tablak\\_fogyatekossag](http://www.ksh.hu/nepszamlalas/tablak_fogyatekossag), Hungarian.

[http://www.ksh.hu/nepszamlalas/tablak\\_fogyatekossaggal\\_elok\\_helyzete](http://www.ksh.hu/nepszamlalas/tablak_fogyatekossaggal_elok_helyzete), Hungarian.

<sup>422</sup> [http://www.ksh.hu/nepszamlalas/tables\\_regional\\_00?lang=en](http://www.ksh.hu/nepszamlalas/tables_regional_00?lang=en); [www.ksh.hu/nepszamlalas/tablak\\_vallas](http://www.ksh.hu/nepszamlalas/tablak_vallas), Hungarian.

<sup>423</sup> [http://www.ksh.hu/nepszamlalas/tables\\_regional\\_00?lang=en](http://www.ksh.hu/nepszamlalas/tables_regional_00?lang=en).

<sup>424</sup> [http://www.ksh.hu/labour\\_market](http://www.ksh.hu/labour_market).

<sup>425</sup> [www.ksh.hu/income\\_and\\_living\\_conditions](http://www.ksh.hu/income_and_living_conditions).

<sup>426</sup> <http://mkogv.jogtar.hu/?page=show&docid=a07h0068.OGY>.

<sup>427</sup> Available in English at: <http://romagov.kormany.hu/download/5/58/20000/Strategy%20-%20HU%20-%20EN.PDF>.

sometimes they are based on different proxies and sometimes on self-identification, sometimes on third-party categorisation. In the case of the National Census and the minority election register, for instance, categories in the National Census included more possibilities than the list of recognised minorities and the list was not definitive, therefore if someone did not find on the list the minority to which s/he belonged, the list could be supplemented. Multiple choices were also possible, e.g. someone could declare him/herself Hungarian and Roma at the same time.

The National Programme on Disability Affairs 2015-2025<sup>428</sup> lays down the policy framework for Hungarian policy on disability matters. It calls on the Government to develop tools with measurable indicators related to governmental policies carried out within the framework of the Programme and to inform the Parliament about the progress and performance analysis of the Programme at the end of the first half of it. This means that by 2020 there should be a set of indicators by which the situation of disabled people can be measured, which presupposes relevant nationwide data collection as well. Currently, there are two general sources of data related to disability. One is the National Census, the other is the official register of people with disabilities which is run by the county-level governmental offices as an official register. Data contained in this register are not public, but anonymous data can be accessed through freedom of information requests. A special database of employees' disability is operated by the National Rehabilitation and Social Office (*Nemzeti Rehabilitációs és Szociális Hivatal*).<sup>429</sup> In the framework of the National Statistical Data Collection Programme (OSAP), data concerning special educational needs and disability and the type of disability are collected in relation to children attending schools. Finally, higher education institutions also collect data on students with disabilities (as well as on social disadvantage), as students with disabilities are entitled to extra admission points and to reasonable accommodation.

Data concerning the number of people belonging to a certain religion can be derived from the data in the National Census. The other source, which can be regarded as a special proxy for the proportion of the population belonging to certain churches, is the number of people who have given 1% of their personal tax to churches; this information is published every year by the National Tax Authority.<sup>430</sup>

In the statistical surveys prepared for the census or any other research conducted on a regular basis by HCSO there are no questions concerning the sexual orientation or gender identity of the respondents. Furthermore, it should be pointed out that there are no available statistical data on complaints submitted or proceedings conducted in connection with sexual orientation or gender identity before the courts (neither civil nor criminal courts).

#### **4. Key issues**

##### *The determination of who belongs to a certain minority*

Although there is a definition for the concept of national minorities, this is not the case when it comes to specific minorities. Nothing defines what it means to be, for example, Roma (which is the biggest minority in Hungary) or how it can be established whether someone belongs to that minority. False declarations and refusal to declare ethnic affiliation distort any data collected on the basis of self-identification. Therefore no nation-wide database gives a realistic picture of the number of people belonging to a certain minority. To prove this in the case of the Roma community, it may be noted that

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<sup>428</sup> Hungary, Resolution of the Parliament No. 15/2015. (IV. 7.) on the National Programme on Disability Affairs 2015-2025 (15/2015. (IV. 7.) OGY határozat az Országos Fogytékosságügyi Programról (2015–2025.)), [http://nit.hu/cqi\\_bin/nit\\_doc.cqi?docid=174903.291647](http://nit.hu/cqi_bin/nit_doc.cqi?docid=174903.291647).

<sup>429</sup> <http://norsa.gov.hu/statistics>.

<sup>430</sup> [http://www.nav.gov.hu/nav/szja1\\_1/egyhaziak\\_kiemelt\\_koltseghozartasi\\_eloiranyzatok](http://www.nav.gov.hu/nav/szja1_1/egyhaziak_kiemelt_koltseghozartasi_eloiranyzatok).

the number of Roma people in the minority election register in 2014 was 155,683,<sup>431</sup> while the number of people declaring affiliation to the Roma community in the 2011 census was 315,583. However, not even data collected through self-identification in the course of the census are comparable, as in 2011 there was a huge campaign<sup>432</sup> calling the Roma to declare their ethnic identity. The result of this was that, while 205,720 people identified themselves as members of the Roma community in 2001, in 2011 the number rose by more than 50% to 315,583.<sup>433</sup> It must be noted though that scientific estimations as to the number of Roma living in Hungary range between 600,000 and 800,000.<sup>434</sup>

To tackle this problem, the Data Protection Ombudsman and Minority Ombudsman took steps towards reviewing and reconsidering ethnic data management rules. In their joint report<sup>435</sup> they defined several criteria: primary (skin colour, specific clothing, surname or first name common/specific to a minority group, name and origin of the parents, place of residence, being recognised as a member of the Roma minority, language or accent) and secondary (e.g. social status, level of education, family model, employment status) which could serve as proxies in generating perceived ethnic data. The methodology developed by the ombudsmen generated a debate among experts and human rights activists. However, the criteria introduced by the joint recommendation were used for determining the proportion of Roma children in a discrimination case at a primary school in Gyöngyöspata, so it seems to be a workable method.

### *Good practices for generating equality databases*

The Hungarian Helsinki Committee (HHC) has developed a method for collecting data on ethnic origin in relation to people stopped and questioned/searched by the police within the strict legal framework related to ethnic data collection. The solution was for the officers to record the perceived ethnicity of the person on an anonymous STEPSS form, to be stored separately from the standard ID check forms that the police have a legal obligation to complete. After each shift, the officers who performed ID checks handed over the STEPSS forms they had filled out to the appointed contact person who at the end of each week forwarded the collected forms to the National Police Headquarters, from where it was sent to the HHC. The HHC's statistician entered the data into a coded database, after which the forms were destroyed. In this way, any possibility of restoring a link between the data and the data subject became impossible. The method was approved by the Data Protection Commissioner and used in a countrywide research project called STEPSS.<sup>436</sup>

In 2009 Chance for Children Foundation<sup>437</sup> initiated proceedings before the Equal Treatment Authority against the municipality and the primary school of Taktaharkány on account of the irregular combining of special classes and the segregated setting of the special classes. The establishment of the proportion of Roma children in the school was a problem to be solved, as no official statistics existed. The method used was the following: two colleagues from the equality body, the president of the local Roma minority self-government body and the headmaster of the school visited each class in the school. The equality body previously prepared a sheet on which one column contained the number of Roma children in the class according to the perception of the

<sup>431</sup> [http://valasztas.hu/hu/ovi/735/735\\_7.html#downloads](http://valasztas.hu/hu/ovi/735/735_7.html#downloads).

<sup>432</sup> <http://www.sosinet.hu/2011/11/21/lezarult-a-roma-nepszamlalasi-kampany/>.

<sup>433</sup> [http://www.ksh.hu/docs/hun/xftp/idoszaki/nepsz2011/nepsz\\_orosz\\_2011.pdf](http://www.ksh.hu/docs/hun/xftp/idoszaki/nepsz2011/nepsz_orosz_2011.pdf).

<sup>434</sup> [http://24.hu/belfold/2011/09/15/csal\\_nepszamlalas\\_ciganyokrol/](http://24.hu/belfold/2011/09/15/csal_nepszamlalas_ciganyokrol/) (in Hungarian); <http://ctisz.webnode.hu/numa-romanes/le-rom-ando-ungro-magyarorszag-ciganyok/> (in Hungarian).

<sup>435</sup> Report on the conclusions of the study about the treatment of ethnically disaggregated data, Parliamentary Commissioner for the Rights of National and Ethnic Minorities and the Parliamentary Commissioner for Data Protection and Freedom of Information, 9 November 2009. Available in Hungarian at: <http://kisebbségiombudsman.hu/data/files/158627216.pdf>.

<sup>436</sup> [http://helsinki.hu/wp-content/uploads/MHB\\_STEPSS\\_US.pdf](http://helsinki.hu/wp-content/uploads/MHB_STEPSS_US.pdf).

<sup>437</sup> <http://cfcf.hu/>.

colleagues from the equality body and another column contained the same information based on the perception of the Roma leader. Each sheet contained data on the overall number of children in the class. They visited each classroom and the headmaster asked the teacher about the number of students currently in the classroom, the number of children enrolled in that class (including those students who were currently absent). The Roma leader and the colleagues from the equality body spent about 2-5 minutes in each classroom and then registered the number of perceived Roma children in each class. After visiting each class, the headmaster provided a copy of the school register. Each class has a school register in which teachers enter the students' names, addresses and performance. The Roma leader provided information on the typical Roma names in the village and the streets in which the Roma mostly live. The equality body then generated perceived ethnic data based on the information from the school registers. As a result the equality body was able to estimate the proportion of Roma students in each class visited.<sup>438</sup>

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<sup>438</sup> Description received from the CFCF.

## 14. Ireland

### Experts: Ursula Barry and Maggie Feeley

#### 1. Relevant legal framework

Irish legislation does not explicitly mention equality data but the permissions, obligations and parameters for gathering information relevant to equality and human rights are contained in a number of items of legislation. The equality-related statutes outlined here complement the fundamental rights guarantees set out under the Irish Constitution: *Bunreacht na hÉireann* (1937).<sup>439</sup> Together these provide the framework within which equality data policy and practices operate.

The Statistics Act 1993<sup>440</sup> relates to data collection in general. The National Statistics Board (NSB) was established through the Act with the general function of 'guiding the strategic direction' of the Central Statistics Office (CSO) which plays the leading role in all national data collection. The Statistics Act fully reflects, and the CSO expressly adheres to, the Fundamental Principles of Official Statistics adopted by the UN Economic Commission for Europe in 1992.<sup>441</sup>

Core equality legislation, the Employment Equality Acts 1998-2011<sup>442</sup> and the Equal Status Acts 2000-2011,<sup>443</sup> prohibit discrimination on nine grounds: gender; civil status (formerly marital status); family status; age; disability; ethnicity; sexual orientation; religious belief; and membership of the Irish Travelling Community. The Employment Equality Acts 1998-2008 cover work practice and relationships including advertising, access to employment, terms and conditions, equal pay, promotion, dismissal, training or work experience. The Equal Status Acts make discrimination illegal in the provision of goods and services, accommodation and education on the same grounds. From 1 January 2016, under an important new amendment, a landlord cannot discriminate against a person in receipt of rent supplement, housing assistance or any payment under the Social Welfare Acts.<sup>444</sup>

The Irish Human Rights and Equality Commission (IHREC) Act 2014<sup>445</sup> was formed by the merger of the roles and the dissolution of the Human Rights Commission and the Equality Authority. Equality data are not mentioned in the Act that sets out the legal framework for the functions and duties of the new body.<sup>446</sup> The IHREC Act (Article 42) introduced a public duty in relation to human rights and equality.<sup>447</sup> In this, Ireland is the first EU state to couple both substantive anti-discrimination dimensions in one statute.<sup>448</sup> Public duty charges Irish publicly funded bodies to have regard to the need to eliminate discrimination, promote equality and protect human rights both in relation to staff and those to whom services are provided. It establishes requirements for an equality and human rights assessment by each organisation and an annual report on evidence of progress in furthering equality goals.

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<sup>439</sup> Ireland, [www.constitution.ie/Documents/Bhunreacht\\_na\\_hEireann\\_web.pdf](http://www.constitution.ie/Documents/Bhunreacht_na_hEireann_web.pdf), accessed 11 January 2016.

<sup>440</sup> Ireland, [www.irishstatutebook.ie/eli/1993/act/21/enacted/en/html](http://www.irishstatutebook.ie/eli/1993/act/21/enacted/en/html) signed on 7 July 1993; accessed 11 January 2016.

<sup>441</sup> Adopted by the UN Statistical Commission (UN Economic and Social Council, 1994, Report of the Special Session of the Statistical Commission, New York, 11-15 April, 1994, E/1994/29).

<sup>442</sup> Ireland, [www.irishstatutebook.ie/1998/en/act/pub/0021/](http://www.irishstatutebook.ie/1998/en/act/pub/0021/), signed on 18 June 1998; accessed 11 January 2016.

<sup>443</sup> Ireland, [www.irishstatutebook.ie/eli/2000/act/8/enacted/en/html](http://www.irishstatutebook.ie/eli/2000/act/8/enacted/en/html), signed on 26 April 2000; accessed 11 January 2016.

<sup>444</sup> A new provision, the Employment Equality Amendment No. 2 Act 2016, has been enacted to establish this new provision.

<sup>445</sup> <http://www.irishstatutebook.ie/eli/2014/act/25/enacted/en/html>, signed 27 July 2014; accessed 11 January 2016.

<sup>446</sup> Ireland, [http://www.ihrec.ie/download/pdf/ihrec\\_act\\_2014.pdf](http://www.ihrec.ie/download/pdf/ihrec_act_2014.pdf), accessed 11 January 2016.

<sup>447</sup> Ireland, <http://www.ihrec.ie/about/ihrec-act-2014.html>, accessed 11 January 2016.

<sup>448</sup> <http://www.paveepoint.ie/project/public-sector-duty-seminar/>, accessed 11 January 2016.

The Disability Act 2005<sup>449</sup> places a statutory obligation on public service providers to support access to services and facilities for people with disabilities. This has data collection implications as, under Part 5 of the Act, the National Disability Authority (NDA) monitors and analyses data on staff with disabilities within the public service.<sup>450</sup> Under S.13 of the National Disability Authority Act 1999, the NDA has a right to access information (including data) held by a public body and monitor the implementation of its Code of Practice on Accessibility of Public Services and Information provided by public bodies.<sup>451</sup>

The Marriage Equality Act 2015<sup>452</sup> amended the Irish Constitution with the wording

'Marriage may be contracted in accordance with law by two persons without distinction as to their sex'.

Data in relation to same-sex unions will now be recorded administratively as well as through the Census of Population. The Gender Recognition Act<sup>453</sup> enables transgender people over the age of 18 to achieve full legal recognition, without recourse to medical certification, of their preferred self-declared gender and allows for the acquisition of a new birth certificate that reflects this change. Young people aged 16-17 can also apply to be legally recognised, though the process is more complex, and therefore lengthy, for that age group.<sup>454</sup> Administrative data in relation to gender re-registration are collected on an ongoing basis and aggregated data are publically available.<sup>455</sup>

The Office of the Data Commissioner provides clear and detailed interpretation of the consolidated Data Protection Acts 1988 and 2003.<sup>456</sup> An amendment of Section 1 of the Principal Act defines data regulated as sensitive as follows: 'Sensitive personal data means personal data as to: (a) the racial or ethnic origin, the political opinions or the religious or philosophical beliefs of the data subject, (b) whether the data subject is a member of a trade union (c) the physical or mental health or condition or sexual life of the data subject, (d) the commission or alleged commission of any offence by the data subject, or (e) any proceedings for an offence committed or alleged to have been committed by the data subject, the disposal of such proceedings or the sentence of any court in such proceedings.'<sup>457</sup>

There is no prohibition on collection of sensitive data but it is regulated, as the table below indicates. The Data Protection Act 1998<sup>458</sup> gave effect to the Strasbourg Convention<sup>459</sup> in relation to data collection, processing, keeping and disclosure. The 2003 Amendment Act<sup>460</sup> brought Irish law into line with the EU Data Protection Directive

<sup>449</sup> Ireland, <http://www.oireachtas.ie/documents/bills28/acts/2005/a1405.pdf>, signed on 8 July 2005; accessed 11 January 2016.

<sup>450</sup> <http://nda.ie/Publications/Employment/Employment-of-people-with-disabilities-in-the-public-service/Reports-on-compliance-with-public-sector-jobs-target/>, accessed 11 January 2016.

<sup>451</sup> <http://nda.ie/Good-practice/Monitoring-Codes-of-Practice/>, accessed 11 January 2016.

<sup>452</sup> Ireland, <http://www.irishstatutebook.ie/eli/2015/ca/34/enacted/en/html>, signed on 29 August 2015; accessed 11 January 2016.

<sup>453</sup> <http://www.irishstatutebook.ie/eli/2015/act/25/enacted/en/html>, signed on 22 July 2015; accessed 11 January 2016. [www.cso.ie/en/index.html](http://www.cso.ie/en/index.html), accessed 11 January 2016.

<sup>454</sup> Ireland, <http://www.irishstatutebook.ie/eli/2015/act/25/enacted/en/print.htm>, accessed 11 January 2016.

<sup>455</sup> Ireland, <http://www.welfare.ie/en/downloads/Revised-General-Scheme-of-the-Gender-Recognition-Bill-2014.pdf>, accessed 29 February 2016.

<sup>456</sup> Ireland, <http://www.dataprotection.ie/viewdoc.asp?DocID=796>, accessed 18 March 2001.

<sup>457</sup> Ireland, <http://www.irishstatutebook.ie/eli/2003/act/6/enacted/en/print.html>, signed on 10 April 2003; Section 2(a) (i) accessed 18 March 2016.

<sup>458</sup> Ireland, <http://www.irishstatutebook.ie/eli/1988/act/25/enacted/en/html>, signed on 13 July 1988; accessed 29 February 2016. <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/108>, signed on 28 January 1981; accessed 18 March 2016.

<sup>460</sup> <http://www.irishstatutebook.ie/eli/2003/act/6/enacted/en/html>, signed on 10 April 2003; accessed 29 February 2016.



95/46/EC.<sup>461</sup> Data protection Rule 1 (Section 2A of the Acts) refers to the 'Fair obtaining and processing' of sensitive data while Section 2B outlines the requirements that need to be satisfied in the 'fair processing of personal sensitive data'.<sup>462</sup>

| Consent | Employment | Health/life | Public | Members | Legal claim | Medicine | Public interest – Other |
|---------|------------|-------------|--------|---------|-------------|----------|-------------------------|
| X       | X          | X           | X      | X       | X           | X        | X                       |

## 2. Definitions and categories used to collect equality data

Classifications used during data collection are primarily determined by the CSO's regulatory requirement or statistical limitations relating to confidentiality (e.g. European legislation determines the level of detail and the specific classifications that should be used for data collection). Data are not collected in relation to all categories used in Irish equality legislation for reasons of sample size and inconsistencies. For example, disability status is not contained in the Quarterly National Household Survey (QNHS) datafile but is in the Survey of Income and Living Conditions (SILC). Neither survey contains information about sexual orientation, religion or membership of the travelling community. Sample size means that representation of some minority groups is not sufficiently statistically significant to be included. Roma are not mentioned in the Census ethnic and cultural background options, however, there is an "other" option that may be completed. The 2016 Census will not fully reflect the Gender Recognition 2015 and Marriage Equality 2015 legislation. Categories on "sex" in the Census remain unchanged since 2011 with only the binary options of "male" or "female". The "relationship" category has been amended in the Census 2016 to accommodate the category of a registered same-sex civil partnership. Sub-categories on "religion" are Roman Catholic; Church of Ireland; Islam; Presbyterian; Orthodox and "other".<sup>463</sup> Subsequent third-party categorisation of religious belief include Jewish; Methodist; no religion; other stated religions; Buddhist; Hindu and Apostolic or Pentecostal.<sup>464</sup>

The IHREC defines some equality grounds more broadly: gender includes being a man, woman or a transsexual/transgendered person. Family status includes being pregnant, a parent or the resident primary carer of a person with a disability, a person acting in place of a parent (loco parentis). Civil status includes being single, married, in a civil partnership, separated, divorced, widowed, or being a former civil partner in a civil partnership that has ended by death or been dissolved. Sexual orientation includes heterosexual, gay, lesbian or bisexual people. Religion covers different religious beliefs or none and age mostly refers to everyone over 18. The IHREC broadly defines disability to include people with physical, intellectual, learning, cognitive or emotional disabilities and a range of medical conditions. The "race" and ethnicity ground includes people of particular race, skin colour, nationality or ethnic origin and finally people who are members of the Traveller community. Roma are again not specified as a category.<sup>465</sup>

<sup>461</sup> <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:31995L0046>, accessed 29 February 2016.

<sup>462</sup> <http://www.dataprotection.ie/viewdoc.asp?m=y&fn=/documents/responsibilities/3c.htm>, accessed 18 March 2016.

<sup>463</sup> <http://www.cso.ie/en/census/2016censusforms/>, accessed 17 February 2016.

<sup>464</sup> [www.cso.ie/en/media/csoie/census/documents/census2011profile7/Profile7EducationEthnicityandIrishTravellerEntireDoc.pdf](http://www.cso.ie/en/media/csoie/census/documents/census2011profile7/Profile7EducationEthnicityandIrishTravellerEntireDoc.pdf), accessed 17 February 2016.

<sup>465</sup> <http://www.ihrec.ie/your-rights/what-is-equality/frequently-asked-question1.html>, accessed 29 February 2016.



### 3. Practical implementation

Equality data are collected through a range of data collection mechanisms, none of which are solely focussed on the issue of equality and discrimination or the nine grounds described in equality legislation. The National Census of Population<sup>466</sup> is conducted every five years and since 2011 the data gathered follow the international guidelines and recommendations prepared by the United Nations in cooperation with Eurostat. The QNHS,<sup>467</sup> formerly the Labour Force Survey (LFS), the SILC<sup>468</sup> and the National Employment Survey (NES)<sup>469</sup> are core official data collection tools that comply with national and EU data collection requirements. In addition to their main focus, these surveys provide useful equality data. From these sources, through special modules and administrative data, evidence about equality and discrimination can be garnered. All the CSO's surveys relating to persons will generally collect data on gender and age for sampling purposes. Additional characteristics relating to sexual orientation, civil status, ethnicity, religion, family status and disability status are collected as required for policy requirements and particular statistical purposes.

Ireland has been conducting a Census of Population since 1821 for the purpose of tracking changes in the social and living conditions of the population. At national level the Census enables planning for major services like health, education, housing, employment and social welfare. At the same time, regional urban and rural area classifications in data collection support accuracy in local planning and budgeting. The system of political representation is predicated upon the number of people living in different constituencies and so the Census plays a key role in determining the number of public representatives and the overall logistics of Irish democracy. Conducted on a five-yearly basis, the Census allows comparisons in the overall population size and helps track numbers of births, deaths, inward and outward migration.

The QNHS was first carried out in September 1997 and replaced the annual Labour Force Survey (LFS). The primary purpose of the survey is the production of quarterly labour force estimates and occasional reports on special social topics. The QNHS is a continuous survey of private households, carried out on a rolling basis and reporting to EUROSTAT every 13 weeks. A team of 10 coordinators and 100 field interviewers collect data from 26,000 people each quarter. Information is stored on laptop computers using computer-assisted personal interview (CAPI) software. Participation is voluntary and there is a high response rate (93%). Forms are delivered to every household by *enumerators* and collected by them in the three weeks after Census Day. Enumerators may assist those who do not feel comfortable completing their form independently. Participation in the Census is a legal obligation under the Statistics Act 1993 and the Statistics (Census of Population) Order 2010. Under Sections 26 and 27 of the Statistics Act, failure to fulfil civic obligations to the Census may result in a fine of up to €25,000. Through the broadly based and representative sample of the QNHS, important, comprehensive baseline data on self-identified experience of inequality and discrimination in Ireland are collected. The focus of the questionnaire shifts each 13-week period between national priorities, EU requirements and modules decided in advance by the NSB based on consultations with stakeholder groups. This provision for additional modules within EU Regulation No. 577/98 has resulted in three special modules on equality in 2004, 2010 and 2014.<sup>470</sup>

The EU-Survey on Income and Living Conditions (EU-SILC) gathers information annually on the income and living conditions of different types of households. In the selected

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<sup>466</sup> <http://www.cso.ie/en/census/index.html>, accessed 18 March 2016.

<sup>467</sup> <http://www.cso.ie/en/qnhs/abouttheqnhs/whatistheqnhs/>, accessed 18 March 2016.

<sup>468</sup> <http://www.cso.ie/en/silc/aboutsilc/>, accessed 18 March 2016.

<sup>469</sup> <http://www.cso.ie/en/surveysandmethodology/earnings/nationalemploymentsurvey/>, accessed 18 March 2016.

<sup>470</sup> <http://www.cso.ie/en/qnhs/releasesandpublications/qnhs-specialmodules/>, accessed 11 January 2016.

households, all those over 16 years of age are asked questions relating to work, income and health, while the head of household provides information on household matters, such as accommodation, expenditure and mortgage payments. The survey gathers information on poverty and social exclusion from a representative random sample of households. Participation in EU-SILC is voluntary; nobody can be compelled to co-operate and assurances of confidentiality are important for those sharing sensitive personal information. Social class is not one of the nine equality grounds and so EU-SILC gathers important information about a neglected area of equality.

The NES was first carried out in 2009 to meet EU requirements to have detailed data on the changing structure of employment and a profile of earnings data in both private and public sectors and to generate a picture of the occupational and sectoral structure of the economy broken down by gender, age, region and size of company. A sample is drawn from the Business Register and covers 10,000 employers and 100,000 employees. The CSO has developed technical information and guidelines for payroll software providers to facilitate the extraction and automatic generation of a data file and/or report every two years and this complies with EU regulations on National Employment Costs and provides the required national data for the European Social Survey (ESS). Data from employers comprise number of employees, performance management and development of employees, company training for staff, employment conditions in the business, performance, paid hours worked and earnings of a representative sample of employees. From employees, data comprise gender, nationality, place of residence, place of work, education, occupation, employment history, work patterns, work practices and performance reviews. Technical frameworks are provided by the CSO, including lists of occupations and economic sectors.<sup>471</sup>

The Workplace Relations Commission (WRC) is an independent, statutory body, established on 1 October 2015 under the Workplace Relations Act 2015 (No. 16 of 2015).<sup>472</sup> It replaces the Equality Tribunal and publishes details of all complaints, decisions and determinations in equality tribunals from responsible bodies prior to its establishment and contemporaneously.<sup>473</sup>

Official statistical data for research, Research Microdata Files (RMFs), are available for statistical research under strict guidelines through a process set out on the CSO website ([www.cso.ie](http://www.cso.ie)).<sup>474</sup> CSO Data access is restricted to the CSO and for researchers on a restricted basis and solely for statistical purposes. There is open access to published data and special requests by academic researchers allow access to specific data for research and evidence-based policy purposes. There is no charge for access to data except in the case of requests for special tabulations when a levy is imposed. Under the provisions of Section 34 of the Statistics Act, 1993, the CSO may provide access to microdata files under strict conditions ensuring the integrity and confidentiality of data collected under the Act.<sup>475</sup> A number of academic and research bodies make data available through a range of archives and publications.<sup>476</sup> Examples of good practice in data collection exist in the NGO sector, for example in the area of violence against women,<sup>477</sup> sexual orientation, gender identity<sup>478</sup> and racially motivated discrimination and violence.<sup>479</sup>

<sup>471</sup> <http://www.cso.ie/en/surveysandmethodology/earnings/earningshoursandemploymentcostssurvey/>, accessed 5 February 2016.

<sup>472</sup> Ireland, <http://www.irishstatutebook.ie/eli/2015/act/16/enacted/en/pdf>, accessed 11 January 2016.

<sup>473</sup> [http://www.workplacerelations.ie/en/Decisions\\_Determinations/](http://www.workplacerelations.ie/en/Decisions_Determinations/), accessed 29 February 2016.

<sup>474</sup> [www.cso.ie/en/aboutus/dissemination/accesstomicrodatarulespoliciesandprocedures/researchaccesstomicrodatafiles/](http://www.cso.ie/en/aboutus/dissemination/accesstomicrodatarulespoliciesandprocedures/researchaccesstomicrodatafiles/), accessed 29 February 2016.

<sup>475</sup> [www.cso.ie/en/aboutus/dissemination/accesstomicrodatarulespoliciesandprocedures/accesstomicrodata/](http://www.cso.ie/en/aboutus/dissemination/accesstomicrodatarulespoliciesandprocedures/accesstomicrodata/), accessed 11 January 2016.

<sup>476</sup> <http://www.ucd.ie/issda/data/economicandsocialresearchinstituteesri/>, accessed 11 January 2016.

<http://www.idstilda.tcd.ie/>, accessed 11 January 2016.

<http://www.esri.ie/publications/winners-and-losers-the-equality-impact-of-the-great-recession-in-ireland/>, accessed 11 January 2016.

<sup>477</sup> <http://www.rcni.ie/wp-content/uploads/RCNI-National-Statistics-2013.pdf>, accessed 29 February 2016.

<sup>478</sup> [www.glen.ie/attachments/SUPPORTING LGBT LIVES - Main\\_Report.pdf](http://www.glen.ie/attachments/SUPPORTING_LGBT_LIVES_-_Main_Report.pdf), accessed 11 January 2016.

## 4. Key issues

The key issue both nationally and across the EU emerges as an absence of harmony between equality legislation and (equality) data collection. Where national statistical experts collaborate closely with minority disadvantaged groups and equality advocates, good examples of equality data collection become possible. The CSO QNHS special Equality Module (EM)<sup>480</sup> was first included in September 2004 and repeated in 2010 and 2014. The survey was originally developed in consultation with the Equality Authority (now integrated into IHREC), the National Disability Association, the Department of Justice, Equality and Law Reform, the National Consultative Committee on Racism and Interculturalism and Pavee Point, an NGO representing the interests of Irish Travellers and Roma. The primary focus of the EM has been to produce high-quality baseline data on discrimination in Ireland. The interview questionnaire focuses on respondents' self-perceived experiences of discrimination over the previous two-year period in a range of areas and based on the nine grounds of discrimination described in Irish law.<sup>481</sup> The questions examine rates, types, frequency, effect and grounds of discrimination. The survey is a subjective measure of discrimination (not a legal measure as such) as it is based on how people felt they were treated. The survey's main value is comparing relative experiences of different groups and over time. The EM is an example of excellence in interagency collaboration and in-depth consultation with stakeholders, including those with expertise in data collection, minority groups, equality advocates and the department with responsibility for justice and equality. After the consultation phase, responsibility for implementation was held by the CSO who make the comprehensive database widely available. This is a model worthy of replication and extension.

Resources are always an issue, both in relation to the collection of equality data but also in the use of equality data. The WRC has been strongly critical of its lack of resources to implement the new provision protecting recipients of social welfare payments from discrimination in access to housing on the private rental market, a provision likely to generate many cases of discrimination. Disadvantaged groups identify the absence of such rigorous equality data as a key issue in their struggle against persistent injustice. The absence of synchronicity between equality grounds and national/EU statistical imperatives makes the evidence about inequalities less accessible than might be the case if equality (and its measurement) were a mainstreamed priority. Much data is collected but because an equality focus is not prioritised, evidence-based discussions, national, transnational and chronological comparisons cannot take place. Consequently, the opportunities for actions against discrimination are squandered. Equality data are an essential part of the weaponry against inequality, discrimination and all forms of unequal treatment in that accurate measurement challenges assumptions about fairness and justice, from which so many are actually excluded. Good equality data provide empirical proof of the reality of persistent injustice. They expose the precise nature of discrimination, locate and quantify areas that require tighter monitoring and enforcement and allow resources to be more equitably distributed to enable positive change. The fight against injustice, both nationally and across the Member States, is intricately connected to the collection of good, reliable and comparable equality data.

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<http://www.lgbtireland.net/>, accessed 11 January 2016.

<http://nxf.ie/wp-content/uploads/2014/02/burning-issues-report.pdf>, accessed 11 January 2016.

[http://www.glen.ie/attachments/Working\\_It\\_Out.pdf](http://www.glen.ie/attachments/Working_It_Out.pdf), accessed 11 January 2016.

[http://www.glen.ie/attachments/Visible\\_Lives\\_Main\\_Report\\_Final.pdf](http://www.glen.ie/attachments/Visible_Lives_Main_Report_Final.pdf), accessed 11 January 2016.

<sup>479</sup> <http://www.ireport.ie>, accessed 29 February 2016.

<sup>480</sup> <http://www.cso.ie/en/media/csoie/qnhs/documents/StdRptQNHSequalityQ32014.pdf>, accessed 17 February 2016.

<sup>481</sup> The nine grounds are: gender; civil status; family status; sexual orientation; disability; membership of the Irish Traveller community; age; and race.

## 15. Italy

**Expert: Chiara Favilli**

### 1. Relevant legal framework

The collection and use of equality data in Italy is very limited and is not carried out on a regular basis.

Legislative decree 2003/215 implementing Directive 2000/43/EC in Italy, allows – but does not require – the National Equality Body to conduct statistical surveys (Article 7, para. 2g).<sup>482</sup> A similar provision is the one contained in Article 3, para. 4, of Law 18/2009, which ratifies the UN CRPD in Italy.<sup>483</sup>

However, there is no legal provision for a periodic collection of equality data nor for a duty on public or private employers to collect equality data. Even data on the number of cases related to discrimination brought to justice are not available. Moreover, the issue of equality data collection has not given rise to public debate, nor have stakeholders raised this among the main issues concerning actions against discrimination. Conversely, international bodies have issued recommendations regretting the lack of equality data in Italy.<sup>484</sup>

Other provisions allow, regulate or prohibit the collection of equality data. For example, according to Article 8 of Law 300/1970, the so-called Workers' Statute, employers are prohibited from enquiring into workers' political, religious and trade unionist beliefs. As far as disability is concerned, employers are allowed to deal with disability data on workers only if strictly necessary and with the consent of the worker; data on disability, like data on health status, may be sent to the competent authorities, for instance to the local employment office in order to comply with the employment quota of workers with disabilities.<sup>485</sup>

The Data protection Code,<sup>486</sup> in line with Directive 95/46/EC,<sup>487</sup> provides for rules and limits to data collection in general and with particular reference to sensitive data, which are equality data (racial and ethnic origin, religious, philosophical or other belief, political opinions, membership of a political party, trade union, religious association or

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<sup>482</sup> Italy, Legislative Decree 215/2003 implementing Directive 2000/43/EC on equality of treatment between persons irrespective of racial or ethnic origin (*Decreto Legislativo 9 luglio 2003, n. 215, Attuazione della direttiva 2000/43/CE per la parità di trattamento tra le persone indipendentemente dalla razza e dall'origine etnica*), available at: [www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2003-07-09:215](http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2003-07-09:215), accessed 5 March 2016.

<sup>483</sup> Italy, Legislative Decree 18/2009 Ratification and execution of the UNCRPD with its Optional Protocol and institution of the National Observatory on the Situation of Persons with Disability (*Ratifica ed esecuzione della Convenzione delle Nazioni Unite sui diritti delle persone con disabilità, con Protocollo opzionale, fatta a New York il 13 dicembre 2006 e istituzione dell'Osservatorio nazionale sulla condizione delle persone con disabilità*), available at: <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2009-03-03:18>, accessed 5 March 2016.

<sup>484</sup> Committee on the Elimination of Racial Discrimination, Concluding observations of the Committee on the Elimination of Racial Discrimination, 4 April 2012, para. 11; [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fITA%2fCO%2f16-18&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fITA%2fCO%2f16-18&Lang=en); OSCE, ODIHR key observations, <http://hatecrime.osce.org/italy?year=2014>, accessed 5 March 2016.

<sup>485</sup> Italy, Law 1999/68 on the employment of persons with disabilities (*Norme per il diritto al lavoro dei disabili*), available at: <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1999-03-12:68>, accessed 12 February 2016.

<sup>486</sup> Italy, Personal Data Protection Code (*Codice in materia di protezione dei dati personali*), 30 June 2003 no. 196, available at: <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2003-06-30:196!vig>, accessed 5 March 2016.

<sup>487</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281, 23 November 1995, p. 31–50.

organisation and data concerning health status and sexual life).<sup>488</sup> In principle, the collection of these data is prohibited according to Articles 20 and 26 of the Data Protection Code, which is in line with Article 8.1 of the Data Collection Directive 95/46/EC. A general exemption is provided for in case of written consent and the Italian data protection authority's prior authorisation. Moreover, all the exemptions of Article 8.2-8.4 apply and additional ones are provided for at Article 26, para. 3a)-b-bis).<sup>489</sup> In addition, public bodies are allowed to process sensitive data only where they are expressly authorised by a law specifying the categories of data that may be processed and the categories of operation that may be performed as well as the substantial public interest pursued, or with the Italian data protection authority's prior authorisation.

Special rules apply for data collected for statistical purposes. Official statistics are carried out by the Istituto Nazionale di Statistica (Istat), following the National Statistical Programme, the document that regulates the production of official statistical information over a three-year period.<sup>490</sup> According to Article 6-bis of the National Statistics Law, special requirements apply for the collection, confidentiality and anonymity of sensitive data.<sup>491</sup> Moreover two Codes of Conduct related to equality data are in force in this field, regarding the National System of Statistics and the activity of scientific research.<sup>492</sup>

| Consent | Employment | Health/life | Public | Members | Legal claim | Medicine | Public interest – Other |
|---------|------------|-------------|--------|---------|-------------|----------|-------------------------|
| X       | X          | X           | X      | X       | X           | X        | X                       |

## 2. Definitions and categories used to collect equality data

Lacking a regular practice of equality collection, no specific definitions and categories have been given that are different from the definitions already enshrined in the legal acts implementing the EU anti-discrimination directives.<sup>493</sup>

<sup>488</sup> Disability falls under the 'health status' ground and is therefore dealt with as sensitive data.

<sup>489</sup> Data concerning members of religious denominations and entities having regular contact with said denominations for exclusively religious purposes, on condition that the data are processed by the relevant organs or bodies recognised under civil law and are not communicated or disseminated outside said denominations; data concerning affiliation of trade unions and/or trade associations or organisations to other trade unions and/or trade associations, organisations or confederations; data contained in CVs under the terms set out in other provisions of the Data Protection Code.

<sup>490</sup> <http://en.istat.it/istat/>; Italy, National Statistical Programme (*Programma nazionale di statistica*) <http://www.sistan.it/index.php?id=52>, accessed 5 March 2016.

<sup>491</sup> Italy, Legislative decree 1989/322, National Statistical Service and reorganisation of the National Office of Statistics (*Norme sul Sistema statistico nazionale e sulla riorganizzazione dell'Istituto nazionale di statistica, ai sensi dell'art. 24 della legge 23 agosto 1988, n. 400*), available at: <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:1989-09-06:322!vig>, accessed 5 March 2016.

<sup>492</sup> Italy, Code of conduct and professional practice applying to the processing of personal data for statistical and scientific research purposes within the framework of the national statistical system (*published in the Official Journal no. 230 of 10 October 2002*), <http://www.garanteprivacy.it/web/guest/home/docweb/-/docweb-display/docweb/1565879>; Italy, Code of conduct and professional practice applying to processing of personal data for statistical and scientific purposes (*published in the Official Journal no. 190 of 14 August 2004*), <http://www.garanteprivacy.it/web/guest/home/docweb/-/docweb-display/docweb/1115480>, links accessed 5 March 2016.

<sup>493</sup> Italy, Legislative Decree 215/2003 implementing Directive 2000/43/EC on equality of treatment between persons irrespective of racial or ethnic origin (*Decreto legislativo 9 luglio 2003, n. 215 Attuazione della direttiva 2000/14310E per la parità di trattamento tra le persone indipendentemente dalla razza e dall'origine etnica*), Official Journal no. 186 of 12 August 2003; Legislative Decree 216/2003 implementing Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (*Decreto legislativo 9 luglio 2003, n. 216 Attuazione della direttiva 2000/78/CE per la parità di trattamento in materia di occupazione e di condizioni di lavoro*), Official Journal no. 187 of 13 August 2003.



A good example is given by a statistical survey on gender, sexual orientation and ethnic origin conducted by the Italian National Institute of Statistics during 2011 in order to collect data regarding actual discrimination experienced by people on the grounds of sexual orientation, homophobia and ethnic origin.<sup>494</sup> While the issue of the definition of discrimination was taken into account with proper reference to the EU Directives, the issue of the definition of grounds appears to be ignored. This is true for all the grounds but it is more evident with regard to racial or ethnic origin. While in fact the title of the survey deals with discrimination on the grounds of "racial or ethnic origin", the questionnaire and the description of the results of the survey deal with "migrants", taken not only as a proxy but as equivalent to "race". To be clearer the survey assumes that discrimination against racial or ethnic origin is discrimination against migrants. For instance, the results of the survey were disseminated through three reports: 'Stereotypes, sacrifices and gender discrimination', 'Migrants seen by citizens', and 'Homosexual population in Italian society'.<sup>495</sup>

Some interesting developments are taking place regarding disability, thanks to the National Disability Observatory. For instance, a project is underway on 'Monitoring indicators' to enhance the capacity and quality of statistical research in the field of disability.<sup>496</sup>

### 3. Practical implementation

Equality data are collected in Italy by the national statistical office, in the framework of the European Statistical System. The relevant statistics are the Labour Force Survey (LFS)<sup>497</sup> and Statistics on Income and Living Conditions (UDB IT SILC, part of the EU-SILC) survey.<sup>498</sup> In addition, Italy is a participating country in the European Social Survey (ESS), taking part in the following rounds: 2002, 2004 and 2012.<sup>499</sup>

The LFS estimates are disseminated on a quarterly basis, except for provincial data which are disseminated annually. The EU-SILC takes places annually.

A limited amount of information can also be derived from the Population and Housing Census, carried out by Istat.<sup>500</sup> The last one was conducted in 2011 and at that time it was foreseen to be conducted once every ten years. Since 2012 a permanent census has been introduced and Istat is working on the methodology to be applied to this sort of census, mainly based on administrative processes.<sup>501</sup>

These official statistics collect data on age, sex, citizenship and religion. Administrative processes are the privileged sources of data for these surveys and data.

<sup>494</sup> Istat, Discrimination on grounds of gender, sexual orientation and ethnic origin: information on the survey (*Discriminazioni in base al genere, all'orientamento sessuale e all'appartenenza etnica: informazioni sulla rilevazione*). As reported on Istat's website, 'The survey was designed to achieve two objectives: on the one hand, to collect data on opinions and attitudes toward gender roles, homosexuality and immigration; on the other hand, to estimate the number of persons who experienced discrimination at school and at work (also including job seeking). The survey was conducted with mixed mode CAPI (Computer Assisted Personal Interview) – SAQ (Self-Administered Questionnaire). In the self-filled paper questionnaire, for the first time Istat collected information on the sexual orientation of respondents, through an ad hoc set of questions'. <http://www.istat.it/it/archivio/30726>, accessed 21 March 2016.

<sup>495</sup> <http://www.istat.it/microdata/download.php?id=wwwarmida/234/2011/01/Nota.pdf>, page 18. See also, in particular, the report 'Migrants seen by citizens', <http://www.istat.it/it/archivio/66563>, accessed 21 March 2016.

<sup>496</sup> <http://www.isfol.it/news/seminario-sugli-indicatori-di-monitoraggio>, accessed 21 March 2016.

<sup>497</sup> See the related section on the Istat website, also available in English, <http://en.istat.it/lavoro/lavret/forcedilavoro/>.

<sup>498</sup> See again the related section on the Istat website, not available in English, <http://www.istat.it/it/archivio/5663>.

<sup>499</sup> <http://www.europeansocialsurvey.org/data/country.html?c=italy>.

<sup>500</sup> <http://www.istat.it/it/archivio/108392>, accessed 21 March 2016.

<sup>501</sup> <http://www.istat.it/it/archivio/censimento+permanente+popolazione>, accessed 21 March 2016.

During 2011 the first survey on actual discrimination experienced by people on the grounds of sexual orientation, homophobia and ethnic origin was carried out, thanks to funding from the Department of Equal Opportunities of the Government, within which the National Equality Body, UNAR, is based.<sup>502</sup>

As far as disability is concerned, the national office of statistics, Istat, makes periodic surveys, within the framework of the National Statistical Programmes.<sup>503</sup> This is also thanks to the Framework Law on Disability, according to which the Government must promote statistical surveys on the situation of people with disabilities.<sup>504</sup> Moreover, data on people with disabilities are collected by several public offices dealing with employment and health services. These data are collected to monitor the general picture concerning the social inclusion of people with disabilities, according to the framework law on the integration of people with disabilities.<sup>505</sup>

In addition, the cooperation between the National Observatory on Disability and the National Statistical Office – Istat appears to be very fruitful.<sup>506</sup> Disability data are collected by different systems, both through surveys using questionnaires and through administrative processes (for instance, schools, employment offices and health services). As far as data collection on disability is concerned, the self-report survey is the most common method employed.

With regard to the national equality body, UNAR, the focus on equality data is found in the strategic documents (Roma and the LGBT strategies) and yearly reports.<sup>507</sup> A project with the Fundamental Rights Agency is also foreseen in order to carry out statistical research into the situation of the Roma, Sinti and Caminanti (RSC) communities, to be repeated regularly. These activities will be funded through the funds 2014-2020 but due to the reorganisation of the equality body they have not yet started and there is a risk that they will remain on paper.

In its annual report to the President of the Council of Ministers, UNAR includes data on discrimination complaints made through its contact centre, with a free phone number and operators speaking several languages (Italian, English, French, Spanish, Arabic, Russian, Romanian and Chinese).<sup>508</sup> The contact centre's only task is to receive and "filter" requests for help from victims of discrimination, while decisions on action are taken by UNAR staff. However, UNAR does not conduct surveys or collect more complex data.

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<sup>502</sup> *IST-02258 Indagine sulle discriminazioni in base al genere, all'orientamento sessuale, alla appartenenza etnica*, in National Statistical Programme 2011-2013, at 90-91, <http://www.sistan.it/index.php?id=52>, (in Italian) accessed 5 March 2016.

<sup>503</sup> <http://www.istat.it/it/archivio/disabili>, accessed 21 March 2016.

<sup>504</sup> Italy, Law 5 February 1992, no. 104, Framework Law on support, social integration and rights of persons with disabilities (*Legge-quadro per l'assistenza, l'integrazione sociale e i diritti delle persone handicappate*), <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1992-02-05:104!vig>, accessed 5 March 2016.

<sup>505</sup> Italy, Law 5 February 1992, no. 104, Framework Law on support, social integration and rights of persons with disabilities (*Legge-quadro per l'assistenza, l'integrazione sociale e i diritti delle persone handicappate*), <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1992-02-05:104!vig>, accessed 5 February 2016.

<sup>506</sup> In particular, the 'website disseminates official statistics on disability produced by Istat and institutions belonging to the National Statistical System. The available data have been processed and organised by Istat in the information system with the aim of documenting the living conditions and the level of social inclusion of people with disabilities and to provide support for the planning of the policies and monitoring of the UN Convention'. [http://dati.disabilitaincifre.it/dawinciMD.jsp?a1=u2i4Y4Y&a2=-&n=\\$\\$\\$\\$1\\$\\$\\$\\$\\$\\$\\$&o=&p=hm&sp=null&l=1&exp=0](http://dati.disabilitaincifre.it/dawinciMD.jsp?a1=u2i4Y4Y&a2=-&n=$$$$1$$$$$$$&o=&p=hm&sp=null&l=1&exp=0), accessed 21 March 2016.

<sup>507</sup> National Strategy for the Inclusion of Roma, Sinti and Caminanti Communities, [http://ec.europa.eu/justice/discrimination/files/roma\\_italy\\_strategy\\_en.pdf](http://ec.europa.eu/justice/discrimination/files/roma_italy_strategy_en.pdf), in particular at 31-33 and 37; National Strategy to prevent and contrast discrimination on grounds of sexual orientation and gender identity (2013-2015), <http://www.pariopportunita.gov.it/images/Strategia%20nazionale%20-%20vers.%20EN.pdf>.

<sup>508</sup> The reports are available at <http://www.unar.it/unar/portal/?p=1735>, last accessed 5 March 2016.



Data on racism as hate crime are collected by law-enforcement authorities and the Ministry of Interior but are not made publicly available. However, detailed information is available thanks to the reporting activity that Italy makes regularly to ODIHR which in turn makes the data available to the public. Information concerns hate crimes recorded by the police, although there is no information regarding hate crime cases which are prosecuted and sentenced.<sup>509</sup> An annual report on racism and hate crimes is carried out by an NGO, LUNARIA, which also reports to OSCE-ODIHR.<sup>510</sup>

Other NGOs active in the field of data collection are Idos, publishing annual reports focusing on immigrants,<sup>511</sup> and Associazione 21 luglio, publishing an annual report on the situation of Roma, Sinti and Caminanti.<sup>512</sup>

Several NGOs are active within the field of sexual orientation and gender identity and they run research and documentation projects. For instance, the NGO Rete Lenford<sup>513</sup> promoted the creation of an Observatory on Sexual Orientation funded by the Tuscany Region. Another example is that of the National Observatory on Gender Identity (*Osservatorio nazionale sull'identità di genere*), which collects and disseminates information on several issues related to gender identity but does not appear to collect equality data directly.<sup>514</sup>

Regarding diversity policies on LGBT it is worth mentioning the publication of the LGBT Report Index: a benchmark on policies for employers in Italy. The report is edited by an NGO, Parks. Liberi e uguali,<sup>515</sup> with the cooperation of the National Equality Office (UNAR), and the Italian Association of Human Resources Directors. The first report was published in 2012 and the current one is the third edition. The report lists the companies where the treatment of LGBT people is particularly good, taking account for instance of their diversity policy and the extension of benefits to same-sex partners.

The ground of disability appears to be the one where NGOs are most organised but promoting research and collection of data by the official institutions rather than collecting directly data on their own. For instance, the platform [www.condicio.it](http://www.condicio.it) collects and disseminates to the general public the most relevant research undertaken by public and private bodies in the field of disability.

#### 4. Key issues

Besides official statistics on population conducted by Istat, there is no relevant practice of equality data collection in Italy. Where data are collected, for instance on age, the aim is to produce a general picture of the Italian population and not to have data on discrimination or effective inclusion.

Lacking a system of collection of equality data, no definitions or methods have been developed so far. The example of the survey on race and ethnic origin carried out during 2011 (Survey on discrimination by gender, sexual orientation and ethnic origin) is paradigmatic, with migrants taken as a proxy of race and ethnic origin. Therefore, comparing these data with others collected in other EU countries may be almost

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<sup>509</sup> OSCE-ODIHR, Hate Crime Reporting, <http://hatecrime.osce.org/italy?year=2014>.

<sup>510</sup> <http://www.cronachediordinariorazzismo.org/>, last accessed 5 March 2016. The report does not have a statistical and scientific approach, but collects data coming from any available public sources, particularly the media and the National Equality Body, UNAR.

<sup>511</sup> *Dossier immigrazione*, available at <http://www.dossierimmigrazione.it/>, last accessed 16 January 2016.

<sup>512</sup> Associazione 21 Luglio, *Activity report 2014*, available at: <http://www.21luglio.org/wp-content/uploads/2015/04/Rapporto-annuale-Associazione-21-luglio.pdf>, pages 32-39, last accessed 5 March 2016.

<sup>513</sup> <http://www.retelenford.it/avvocatura-lgbti/documenti.html>, last accessed 16 January 2016.

<sup>514</sup> <http://www.onig.it/drupal/?q=node/50>, last accessed 5 March 2016.

<sup>515</sup> [http://www.parksdiversity.eu/parks/wp-content/uploads/2015/11/Index\\_risultati\\_2013.pdf](http://www.parksdiversity.eu/parks/wp-content/uploads/2015/11/Index_risultati_2013.pdf), last accessed 21 March 2016.

impossible. In particular, a serious concern may rise for people belonging to the Roma, Sinti and Caminanti communities, the majority of whom are Italian citizens.

The lack of an effective system of equality data collection is recognised as a shortcoming to be overcome, according to national strategies on Roma and LGBT people. This may be one of the most interesting developments in the near future in the activities of the national equality body, UNAR, which is in charge of the implementation of the aforementioned strategies. However, there is a real risk that these planned activities will not be effectively implemented and that they will remain nothing but words. This is because the organisation of the equality body, UNAR, is under review and it is not clear if all the planned activities will actually be implemented.

With regard to disability, the collection of equality data appears to be more developed, mainly thanks to the cooperation between the National Observatory on Disability and Istat.

Finally, it is worth mentioning that the lack of equality data also concerns data on legal actions and judgments; neither a system of collection for these data, nor a record of discrimination actions are in place.

## 16. Latvia

**Expert: Tana Lace**

### 1. Relevant legal framework

There is no specific and unified legal provision on equality data collection in Latvia. A large number of different official administrative registers and databases contain some aspects of equality data (for example, age, ethnic origin or disability) and each of these systems and the respective data collection are regulated by several national regulatory acts. The general legal provisions binding for all institutions providing official statistics and relevant for equality data collection are included in the framework legislation on official statistics and in the framework legislation on the protection of personal data.

The Statistics Law regulates equality data collection and processing.<sup>516</sup> The Statistics Law prescribes criteria for the assessment of what statistics should be included in the national statistical information programme, provides the procedure for the development of the official statistical programme, sets the procedure for the development of current sources of administrative data and new registers, databases and information systems for statistical needs, and obliges the Central Statistical Bureau (the CSB) to conduct national surveys (including the census, EU-SILC, LFS etc). The Statistics Law prescribes the activities which are authorised to be carried out with data, including regulating issues of confidentiality and the availability of the data, as well as the protection of data provided for research. The Regulation of the Cabinet of Ministers No. 750 on the National Statistical Information Programme for 2016 stipulates: 1) the designation of the official statistics (survey or calculation) and indicators to be published; 2) the details of each indicator to be published; 3) the institution that is responsible for the provision of official statistics; 4) the frequency of the publication of official statistics; 5) the forms of statistical observation and observation methods to be used; and 6) the type, scope and purpose of use for personal data acquired from the individual and administrative data sources.<sup>517</sup> The inclusion of equality data in official statistics according to the above-mentioned legal provision makes data collection and processing mandatory for the responsible institution.

The collection of equality data on multiple grounds is permitted by the Ombudsman Law.<sup>518</sup> As stipulated in the law the Ombudsman shall accept and examine submissions from private individuals, in accordance with the procedures laid down in this Law, conduct research and analyse the situation in the field of human rights, as well as provide opinions regarding topical human rights issues.

The Personal Data Protection Law contains legal norms arising from Directive 95/46/EC.<sup>519</sup> Latvia has prohibited the processing of personal data revealing an individual's race, ethnic origin, religious, philosophical or political convictions, or trade union membership, or providing information about the health or sexual life of an individual in conformity with Article 8.1 of Directive 95/46/EC. Data with regard to such grounds as disability, sexual orientation, ethnic or racial origin, religion or belief, or

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<sup>516</sup> Latvia, Statistics Law (*Statistikas likums*), adopted 4 June 2015, Articles 13 -17; available at <http://likumi.lv/ta/id/274749-statistikas-likums>.

<sup>517</sup> Latvia, Regulations of the Cabinet of Ministers No. 750 on the National Statistical Information Programme for 2016 (*Ministru kabineta noteikumi Nr. 750 "Noteikumi par Valsts statistiskās informācijas programmu 2016.gadam"*), adopted 22 December 2015; available at <http://likumi.lv/ta/id/278782-noteikumi-par-valsts-statistikas-informacijas-programmu-2016-gadam>.

<sup>518</sup> Latvia, Ombudsmen Law (*Tiesībsarga likums*), adopted 6 April 2006, Articles 11-12, available at <http://likumi.lv/doc.php?id=133535>.

<sup>519</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data; available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31995L0046>.

gender identity are thus deemed to be special categories of data (sensitive data).<sup>520</sup> The purpose of this Law is to protect the fundamental human rights and freedoms of natural persons, in particular the inviolability of private life, with respect to the processing of data regarding natural persons.

The Personal Data Protection Law provides all the exemptions mentioned in Articles 8.2 - 8.3 of Directive 95/46/EC. In accordance with Article 8.4 of Directive 95/46/EC, Latvia has laid down some additional exemptions in the Personal Data Protection Law, such as 1) processing of personal data when it is necessary for the provision of social assistance and it is performed by the provider of social assistance services; 2) processing of personal data when it is necessary for the establishment of national documentary heritage and it is performed by the Latvian national archives and accredited private archives; 3) processing of personal data when it is necessary for statistical research, which is performed by the CSB; and 4) processing of personal data when it is necessary when performing State administration functions or establishing State information systems laid down in the law.

| Consent | Employment | Health/life | Public | Members | Legal claim | Medicine | Public interest – Other |
|---------|------------|-------------|--------|---------|-------------|----------|-------------------------|
| X       | X          | X           | X      | X       | X           | X        | X                       |

## 2. Definitions and categories used to collect equality data

Definitions on equality data are not prescribed in the laws related to data collection, some definitions on equality data are included in other pieces of legislation.

Disability: according to the Disability Law a disability is defined as a long-term or non-transitory very severe, severe or moderate level of limited functioning which affects a person's mental or physical abilities, ability to work, self-care and integration into society. Limited functioning means a disorder of a physical or mental nature caused by a disease, trauma or congenital defect (physical capabilities; ability to learn, communicate, orientate oneself, move about, take care of oneself, control one's behaviour, activities and participation) which restricts the capacity of a person to work and take care of themselves and makes it difficult for a person to integrate into society.<sup>521</sup> The recognition of disability and the official status of a person with a disability is identified by third-party categorisation (the State Medical Commission for the Assessment of Health Condition and Working Ability (the SMC)). The methodological materials of the CSB contain the following definition of disability: 'Continuous or irreversible decline in physical or mental abilities (not related to ageing) that hinders social integration and diminishes working capacity and either deprives fully or restricts partly the ability of an individual to take care of himself/herself'.<sup>522</sup>

Age: data on age is collected in almost all national surveys and administrative registers through self-identification or third-party categorisation and can be also obtained from national identity documents (personal code/ number in passport or identity card) or birth certificates.

<sup>520</sup> Latvia, Personal Data Protection Law (*Fizisko personu datu aizsardzības likums*), adopted 23 March 2000, Articles 2, 11 and 29; available at <http://likumi.lv/doc.php?id=4042>.

<sup>521</sup> Latvia, Disability Law (*Invaliditātes likums*), adopted 20 May 2010, Articles 1 and 5; available at <http://likumi.lv/doc.php?id=211494>.

<sup>522</sup> Available at [www.csb.gov.lv/en/statistikas-temas/metodologija/health-care-and-sports-37039.html](http://www.csb.gov.lv/en/statistikas-temas/metodologija/health-care-and-sports-37039.html).

Religion or belief: there is no definition of religion or belief.

Ethnic or racial origin: the category "ethnic origin" (*tautība*) is used for the collection of ethnic or racial origin data in Latvia in administrative data as well as survey and census data through self-identification. For official statistics, the classification of ethnic origin has been used.<sup>523</sup> Regulation of Cabinet of Ministers No. 246 on the classification of ethnic origin defines a category "ethnic origin" (*tautība*) as belonging to certain ethnic group or nation. The classification included in the regulation contains more than 300 records of ethnic groups. Part of the official statistics and data of surveys includes data about the ethnicity and citizenship (*pilsonība*) of the individual. While before the restoration of independence an entry of "ethnicity" was an integral part of many documents and forms, in recent years there has been a tendency to exclude this category from statistical data collection by institutions.

Sexual orientation and gender identity: there are no definitions of sexual orientation and gender identity in Latvia. In comparative surveys conducted by EU agencies or authorities, the definition traditionally concerns lesbian, gay, bisexual and transgender (LGBT) people. Methods for data collection on sexual orientation are victim surveys or self-report surveys.

Multiple grounds: there is no specific definition for equality data on multiple grounds. In surveys conducted in Latvia usually any combination of the five discrimination grounds (racial or ethnic origin, religion or belief, disability, age or sexual orientation) is categorised as multiple grounds equality data. Methods for data collection for multiple grounds are victim surveys, self-report surveys and files kept by the authorities concerned.

### 3. Practical implementation

In Latvia responsibility for processing equality data is divided among many public and local government institutions, according either to the functions they perform or to the services they provide. Primary responsibility for equality data collection has been assigned to the public service provider institutions which collect administrative data or the CSB which conducts certain surveys, collects census data and ensures data collection for national statistics.

At the national level public and local government institutions collect the following equality data in administrative registers and national information systems: data on disability, ethnic origin, age and multiple grounds.

The Office of Citizenship and Migration Affairs (<http://www.pmlp.gov.lv/>) maintains the Population Register, collecting information on gender, dates of birth and death, nationality, ethnic origin and marital status.<sup>524</sup> The CSB organises the Population Census in Latvia, including information about gender, age, citizenship, ethnicity and legal marital status in the personal data questionnaire. The State Employment Agency (the SEA) aggregates data on job offers issued to third-country nationals and their breakdown by sector and profession, as well as providing breakdowns of third-country nationals who have received job offers by citizenship, educational level and age. In its turn, the Ministry of Education and Science collates data on foreign students in Latvia's higher

<sup>523</sup> Latvia, Regulation of Cabinet of Ministers No. 246 on the classification of ethnic origin (*Noteikumi par tautību klasifikatoru*), adopted 8 April 2008, available at <http://likumi.lv/doc.php?id=173765>, accessed 5 March 2016.

<sup>524</sup> Latvia, Regulation of Cabinet of Ministers No. 811 on Statutes of the Office of Citizenship and Migration Affairs (*Pilsonības un migrācijas lietu pārvaldes nolikums*), adopted 3 October 2006, available at <http://likumi.lv/doc.php?id=145116>, accessed 10 January 2016; Regulation of Cabinet of Ministers No. 378 on information scope included in the Population Register (*Noteikumi par Iedzīvotāju reģistrā iekļaujamo ziņu apjomu*), adopted 9 July 2013, available at <http://likumi.lv/doc.php?id=258187>, accessed 10 January 2016.

educational institutions by citizenship, language of instruction and educational institution. All public and municipal institutions which collect official statistics also aggregate information about public services they provide to the population by gender and by age group.

The SMC collects and processes data on disability in compliance with Cabinet Regulation No. 315 of 26 April 2011 on the State Medical Commission for the Assessment of Health Condition and Working Ability and Cabinet Regulation No. 805 of 23 December 2014 on Criteria, Time Periods and Procedures for the Determination of Predictable Disability, Disability and the Loss of Ability to Work (<http://www.vdeavk.gov.lv/>). Other public and municipal institutions collect data on people with disabilities who receive the public services they provide and/or to establish the scale of the service provided. The SEA collects information about unemployed people with disabilities, as this is one of the primary target groups for whom support must be provided, and the State Social Insurance Agency collects data on recipients of disability pensions. Local authorities have lists of people with disabilities and disabled children as one of the groups receiving social assistance, while providers of medical treatment services register the fact of a person's disability as it means that the person is entitled to exemption from payment or to reduced payments. The CSB has included disability as one of the causes of economic inactivity in the LFS, etc.

The primary aim of data collection in administrative registers and national information systems is to provide the necessary statistical information for national and local authorities to ensure the development, monitoring and evaluation of policies and policy measures, the development and assessment of public services provided by national and local authorities, and the preparation of the state national budget and local budgets, as well as to inform society about social and economic processes and the effectiveness of policy measures implemented.<sup>525</sup>

Where applicable, official statistics are available broken down by variables such as age and ethnic origin. Administrative data from national authorities are available broken down by variable *disability*.<sup>526</sup>

Official statistical data collected by public and local government institutions are not available broken down by variables such as sexual orientation or gender identity, religion or belief, or multiple grounds. No institution is directly responsible for equality data collection on sexual orientation, gender identity and religion or belief. No institution is directly responsible for equality data collection on multiple grounds, however, taking into consideration the functions performed, the collection and analysis of these data should be provided by the Ombudsman's Office or law enforcement agencies.

Through the major national surveys, such as the LFS or EU-SILC, the following personal data related to the equality grounds are collected: age, ethnic origin (country of birth) and disability or long-term loss of working ability. Surveys are conducted according to Eurostat internationally harmonised methodology. In Latvia these regular surveys are conducted in line with requirements laid down in the Regulations of the European Commission and no additional indicators are added. No other official national surveys relevant in the context of this report are conducted in Latvia in addition to the international surveys (LFS,<sup>527</sup> EU-SILC,<sup>528</sup> ESS<sup>529</sup> and Eurobarometer).

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<sup>525</sup> Latvia, Statistics Law, adopted 4 June 2015, Article 5; available at <http://likumi.lv/ta/id/274749-statistikas-likums>.

<sup>526</sup> Latvia, Regulation of the Cabinet of Ministers No. 750 on the National Statistical Information Programme for 2016, adopted 22 December 2015; available at <http://likumi.lv/ta/id/278782-noteikumi-par-valsts-statistikas-informacijas-programmu-2016-gadam>.

<sup>527</sup> LFS in Latvian – *Darbspēka apsekojums*; EU- SILC in Latvian – *Apsekojums "Statistika par ienākumiem un dzīves apstākļiem*; Eurobarometer in Latvian – *Eiropabarometra apsekojums*. Data and methodological information on surveys are available at [www.csb.gov.lv/](http://www.csb.gov.lv/).



If equality data are collected within the framework of the official statistics, then the responsible institution, the frequency of publication of official statistics as well as data types and sources collected are established by the Cabinet Regulation on the National Statistical Information Programme for the Current Year<sup>530</sup> and the respective information is publicly accessible on the website of the CSB.<sup>531</sup> In most cases the publication period for official statistics is one year, however, institutions which conduct the collection of respective equality data provide more frequent publication of these data and on a larger scale than the information included in the official statistics.

In Latvia NGOs are not involved in equality data collection at the national level. The NGOs conduct separate research studies or collect information that is related to their operations or activities on specific projects for target groups in their field of activity. However, this work cannot be viewed as systematic, methodologically and statistically justified equality data collection.

Regular monitoring of anti-discrimination aspects is undertaken by an independent research institution, the Latvian Centre for Human Rights (the LCHR). Every year the LCHR publishes a Human Rights Report about the main developments and issues in the previous year in Latvia. However, even in this case it is not possible to talk about equality data collection as the LCHR uses data from official statistics collected by public and municipal institutions as well as research data.<sup>532</sup>

Universities and research institutes in Latvia are not involved in equality data collection at the national level as permanent partners. Universities and research institutes collect, process and assess equality data within the framework of separate research studies or projects where the primary aim is not equality data monitoring, and these research studies do not have a systematic character.

#### 4. Key issues

No equality data collection for sexual orientation/ gender identity and religion or belief is undertaken at the national level; data collection is fragmented, is not undertaken on a regular basis and is based on different methodologies. Thus one of the challenges in equality data collection is to ensure the collection of data on such categories as "sexual orientation/ gender identity" or "religion or belief" at national level on a regular basis. The ECRI recommendation for Latvia to 'ensure that relevant information broken down according to the categories of ethnic origin, language, religion and nationality are collected and published in different policy areas, on a continual basis, with a view to monitoring the integration of Latvian society' should still be considered as relevant.<sup>533</sup>

In Latvia official statistical data on discrimination experiences based on the six discrimination grounds are no longer disaggregated. A certain insight into discrimination was provided up to 2010 by the information provided by the Ombudsman's Office on the basis of complaints and applications it had received from individuals in the Ombudsman's Annual Report. Unfortunately, in 2011 after the appointment of the new Ombudsman

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<sup>528</sup> EU SILC, in Latvian: [www.csb.gov.lv/en/statistikas-temas/metodologija/housing-conditions-eu-silc-survey-38999.html](http://www.csb.gov.lv/en/statistikas-temas/metodologija/housing-conditions-eu-silc-survey-38999.html).

<sup>529</sup> The European Social Survey (ESS) cannot be considered as a regular equality data collection source in Latvia. Latvia has participated in only some waves of this survey because of lack of funding (ESS in Latvian – *Eiropas Sociālais pētījums*).

<sup>530</sup> Latvia, Regulation of the Cabinet of Ministers No. 750 on the National Statistical Information Programme for 2016, adopted 22 December 2015; available at <http://likumi.lv/ta/id/278782-noteikumi-par-valsts-statistikas-informacijas-programmu-2016-gadam>, accessed 7 January 2016.

<sup>531</sup> [www.csb.gov.lv/](http://www.csb.gov.lv/).

<sup>532</sup> <http://cilvektiesibas.org.lv/en/publications/?year=2016>, accessed 17 March 2016.

<sup>533</sup> Council of Europe. ECRI Report on Latvia (fourth monitoring cycle) CRI (2012)3. Adopted on 9 December 2011. Published on 21 February 2012, available at: [www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Latvia/LVA-CbC-IV-2012-003-ENG.pdf](http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Latvia/LVA-CbC-IV-2012-003-ENG.pdf), accessed 15 January 2016.



this practice was discontinued and information on cases of discrimination based on specific discrimination grounds is no longer disaggregated in these reports.

To date, there has been no discrimination monitoring system in Latvia. Lack of a comprehensive discrimination monitoring and prevention system as well as the absence of regular research studies on social exclusion and discrimination issues in Latvian society have been identified as problems in the Latvian policy document, 'Guidelines on the National Identity, Civil Society and Integration Policy for 2012-2018'. Latvian anti-discrimination policy is explicitly horizontal, with a complicated grid for the division of responsibility, insufficient coordination and a comparatively low priority on the overall political agenda. Therefore one of the policy measures highlighted by the government was the formulation of guidelines for the anti-discrimination policy monitoring system developed in 2014.<sup>534</sup> The discrimination monitoring system should cover such fields as employment, education, health, welfare and perceived discrimination and should be applied at the national level. The Ministry of Culture is responsible for the implementation of this discrimination monitoring system. However, due to lack of funding the proposed monitoring system has not yet been implemented.

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<sup>534</sup> Zepa B., Kļave E., Hazans M. *Guidelines for the anti-discrimination policy monitoring system*. Riga, Society Integration Fund, 2014, p.16-17.

## 17. Lithuania

**Expert: Boguslavas Gruzevskis**

### 1. Relevant legal framework

There is no specific legislation on equality data collection in Lithuania or legislation that would include an obligation to collect equality data. Therefore, legal provisions of relevance for the collection of data are included in the Law on Population Registers<sup>535</sup> and in the Law on the Legal Protection of Personal Data<sup>536</sup> which are also used when carrying out the national Census.

The collection of personal data must be in compliance with the requirements of the Law on the Legal Protection of Personal Data laying down a general prohibition on collecting or processing special categories of data<sup>537</sup>. In Lithuanian law, special categories of personal data are defined as data concerning the racial or ethnic origin of a natural person, his/her political opinions or religious, philosophical or other beliefs, membership of trade unions, health, sexual life or criminal convictions.<sup>538</sup>

In compliance with Article 26 of the Law on the Legal Protection of Personal Data (Žin., 1996, No. 63-1479; 2003, No. 15-597), data controllers intending to process special categories of personal data by automatic means are required to request prior authorisation from the State Data Protection Inspectorate, which is directly responsible for the implementation of the Law.<sup>539</sup> Article 33(2) of the Law on the Legal Protection of Personal Data states that special personal data may be processed only if an authorisation has been granted by the State Data Protection Inspectorate. Special categories of data may be processed only if the data subject has given explicit consent or in the case of the exceptions mentioned in Article 5 (1)-(8). It should be noted that the exceptions provided for in the Law on the Legal Protection of Personal Data are in conformity with the exceptions listed in Articles 8.2-8.4 of the EU Directive.<sup>540</sup>

The use of the special categories of data for statistical purposes is foreseen in Article 13 of the Law on the Legal Protection of Personal Data, although only if strict anonymity is ensured.<sup>541</sup> Article 13 states that special categories of personal data may be processed by data users for statistical purposes, social and public opinion research.

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<sup>535</sup> Lithuania, Law on Population Registers (*Lietuvos Respublikos gyventojų registro įstatymo Nr. I-2237 pakeitimo įstatymas*), available in Lithuanian at: [www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=487081&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=487081&p_tr2=2).

<sup>536</sup> Lithuania, Law on the Legal Protection of Personal Data (*Asmens duomenų teisinės apsaugos įstatymas*), 1996, No. 63-1479, available in Lithuanian at: [www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=400103](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=400103).

<sup>537</sup> Lithuania, Law on the Legal Protection of Personal Data (*Asmens duomenų teisinės apsaugos įstatymas*), 1996, No. 63-1479, available in Lithuanian at: [www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=400103](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=400103).

<sup>538</sup> Lithuania, Law on the Legal Protection of Personal Data (*Asmens duomenų teisinės apsaugos įstatymas*), 1996, No. 63-1479, available in Lithuanian at: [www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=400103](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=400103).

<sup>539</sup> State Data Protection Inspectorate, *Rekomendacijos dėl išankstinės patikros* (Prior checking recommendations), available at: [www.ada.lt/images/cms/File/Rekomendacijos\\_deli\\_sankstinės\\_patikros.pdf](http://www.ada.lt/images/cms/File/Rekomendacijos_deli_sankstinės_patikros.pdf).

<sup>540</sup> Lithuania, Law on the Legal Protection of Personal Data (*Asmens duomenų teisinės apsaugos įstatymas*), 1996, No. 63-1479, available in Lithuanian at: [www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=400103](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=400103).

<sup>541</sup> Lithuania, Law on the Legal Protection of Personal Data (*Asmens duomenų teisinės apsaugos įstatymas*), 1996, No. 63-1479, available in Lithuanian at: [www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=400103](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=400103).

| Consent | Employment | Health | Public | Members | Legal claim | Medicine | Public interest – Other |
|---------|------------|--------|--------|---------|-------------|----------|-------------------------|
| X       | X          | X      | X      | X       | X           | X        | X                       |

Article 8(4) of the Law on Statistics of the Republic of Lithuania stipulates that Statistics Lithuania has the right to organise and carry out general censuses.<sup>542</sup> Information collected during the general Census of 2011 contained data on the residents' country of birth, nationality, citizenship, native language, etc. Therefore, general censuses represent an important source of information for the collection of equality data relating to ethnic origin, disability, age, religion or belief.

Another relevant piece of legislation prohibiting equality data collection and processing is the Law on Population Registers. Article 11(7) of the Law on Population Registers states that information about ethnic origin, the legal capacity of a person or its restriction can be provided for use in accordance with explicitly outlined functions in particular laws or other enactments. The Law on Population Registers states that the use of data is allowed only for certain authorised public agencies which are exercising particular functions as established by law.<sup>543</sup>

## 2. Definitions and categories used to collect equality data

In Lithuania most of the definitions and categories used for equality data collection are based on self-identification.

The definition of national minority used in Lithuania has a strong emphasis on nationality and citizenship. The newly prepared draft law<sup>544</sup> defines a national minority as a group of citizens of the Republic of Lithuania who have a culture, religion and language, or any one of these, which are different from those of the national majority and who are united by the ambition to preserve their national identity. Censuses also contain open questions about the nationality a person attributes to himself/herself (self-identification), in addition to questions referring to citizenship and native language. Censuses use open-ended questions about citizenship. It is possible to choose Lithuanian, Polish or Russian citizenship or indicate one's own. The same applies to language: it is possible to choose between Russian, Polish and Lithuanian or indicate one's own.<sup>545</sup> Identification of racial or ethnic origin involves, inter alia, alternative categories (proxies), such as citizenship, country of birth, country of birth of parents, language spoken at home, migration background and name.

It should be noted that data on religion and belief are also collected during censuses and are based on the principle of self-identification, i.e. which religious groups individuals identify themselves with. Article 5 of the Law on Religious Communities and Associations

<sup>542</sup> Lithuania, Law of the Republic of Lithuania on Statistics (*Lietuvos Respublikos Statistikos įstatymas*), No. I-270, 1993, available in Lithuanian at: [www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=371719](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=371719).

<sup>543</sup> Lithuania, Law on Population Registers (*Lietuvos Respublikos gyventojų registro įstatymo Nr. I-2237 pakeitimo įstatymas*), available in Lithuanian at: [www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=487081&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=487081&p_tr2=2).

<sup>544</sup> The draft law was submitted for reading by the Parliament (Seimas) of the Republic of Lithuania in 2013. At time of writing, the law has not yet been approved by the Parliament. The reading of this draft law should be resumed in the 2016 spring session of the Parliament.

<sup>545</sup> Information provided by a representative of Statistics Lithuania. Received by email, 15 December 2015.

contains an list of nine traditional religious communities and associations.<sup>546</sup> Individuals are free to identify themselves with any of the nine traditional communities or associations recognised in Lithuania, or indicate another non-traditional community they identify themselves with.<sup>547</sup> The number of non-traditional religious communities is not reflected in the census results; such data falls under the category "Other".

With regard to LGBT people, it should be noted that they are identified only on the basis of self-identification, owing to a lack of external objective criteria for identifying sexual minority membership unless individuals disclose this information themselves.

The issue of third-party categorisation arises in investigating discrimination/hate crimes, when law and order officers make records of a person's characteristics (membership of a particular group, etc.).<sup>548</sup> However, the police do not systematically recognise and investigate the racial elements of crimes unless the victim or witness explicitly states it was a racist crime. Thus, the criterion of self-identification plays an important role in this respect.

With regard to disability, the key definitions related to the notion of disability are laid down in the Law of the Republic of Lithuania on the Social Integration of the Disabled.<sup>549</sup> The degree of incapacity/capacity for work is determined by the Service for Establishing Disability and Capacity for Work at the Ministry of Social Security and Labour.

### 3. Practical implementation

A comprehensive system for collecting equality statistics is not yet in place in Lithuania. Although a draft plan for equality statistics collection was prepared within the framework of the PROGRESS project, it has not been implemented in practice. Nonetheless, there are data from official statistics or administrative sources, research and complaints data that can be used for the evaluation of equal opportunities and discrimination phenomena.<sup>550</sup>

**Information published by Statistics Lithuania as an official statistics agency on the basis of administrative sources, statistical surveys and population/housing censuses.** Data related to the equality grounds are collected through the major national surveys, such as the EU Labour Force Survey (LFS),<sup>551</sup> the EU Statistics on Income and Living Conditions Survey (EU SILC)<sup>552</sup> and the Population and Housing Census carried out by Statistics Lithuania.<sup>553</sup>

The Labour Force Survey is carried out by Statistics Lithuania on a quarterly basis to collect data on gender, age and place of residence. Statistics Lithuania provides Eurostat

<sup>546</sup> Lithuania, Law on Religious Communities and Associations (*Lietuvos Respublikos religinių bendruomenių ir bendrijų įstatymas*), 1995, No 89-1985, available in Lithuanian at: [www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=363706](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=363706).

<sup>547</sup> In compliance with the Law on Religious Communities and Societies, in Lithuania today there are religious communities and associations with four different statuses: state-recognised traditional, state recognised, other (non-traditional), registered and non-registered religious communities and associations.

<sup>548</sup> Alternative Report on Lithuania's sixth, seventh and eighth periodic reports to the UN Committee on the Elimination of Racial Discrimination (CERD): [http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/LTU/INT\\_CERD\\_NGO\\_LTU\\_22231\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/LTU/INT_CERD_NGO_LTU_22231_E.pdf).

<sup>549</sup> Lithuania, Law of the Republic of Lithuania on the Social Integration of Disabled People (*Lietuvos Respublikos neįgalųjų socialinės integracijos įstatymas*), 2004, No 83-2983, available in Lithuanian at: [www3.lrs.lt/pls/inter2/dokpaieska.showdoc\\_l?p\\_id=264550&p\\_query=&p\\_tr2=](http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=264550&p_query=&p_tr2=).

<sup>550</sup> Okunevičiūtė Neverauskienė, L., Gruževskis, B. (2009), Institute of Labour and Social Research at the Lithuanian Social Research Centre. *Lygybės statistikos pagrindai. Nacionalinis lygybės statistikos rengimo veiksmų planas* [Fundamentals of equality statistics. National Action Plan for the Development of Equality Statistics], available at: [www.lygybe.lt/lt/tarnybos-leidiniai.html](http://www.lygybe.lt/lt/tarnybos-leidiniai.html), accessed on 9 December 2015.

<sup>551</sup> See the news releases for May 2015, accessible at: <http://osp.stat.gov.lt/en/informaciniai-pranesimai?articleId=3379980>.

<sup>552</sup> See the following link: [http://osp.stat.gov.lt/documents/10180/0/qyvenimo+salygos\\_metainfo-EN](http://osp.stat.gov.lt/documents/10180/0/qyvenimo+salygos_metainfo-EN).

<sup>553</sup> See the following link: <http://osp.stat.gov.lt/en/2011-m.-surasymas>.

with data from national labour force surveys. It should be noted that data on the economic activity rate disaggregated by ethnicity have not been collected by Statistics Lithuania since 2003. Therefore, it is not possible to extract official data about the situation of ethnic minorities in the labour market.

The Income and Living Conditions Survey is an annual survey conducted in Lithuania by Statistics Lithuania, covering the collection of data broken down by age and gender. In Lithuania, EU-SILC surveys<sup>554</sup> have been carried since 2005 on an annual basis in compliance with Regulation (EC) No. 1553/2005.<sup>555</sup>

The Census is conducted by Statistics Lithuania and corresponds to European Regulation 763/2008. Census data collected by Statistics Lithuania every 10 years represent an important source of information on the composition of the population. The data are broken down by sex, age, marital status, country of birth, citizenship, migration indicators, nationality, disability, native language and command of languages, belonging to a religious community, education, source of living and education. An issue of sample representativeness and, at the same time, reliability arises with regard to collecting data on ethnic minorities. According to Statistics Lithuania, Lithuania is a homogeneous country in terms of nationality, with the majority of Lithuania's population being Lithuanians (84.2% in 2011, 83.4% in 2001). In 2011, Poles accounted for 6.6% (6.7% in 2001), Russians for 5.8% (6.3% in 2001) and other nationalities for 3.4% (3.6% in 2001) of the population.<sup>556</sup> The number of national minority respondents in statistical samples is too small to produce representative, country-wide data. For this reason national authorities will no longer collect data about ethnic origin and it is planned to use administrative data<sup>557</sup> for the census in 2021.<sup>558</sup> It is noted that proxy data on ethnicity are only collected during censuses; no other statistical surveys carried out by Statistics Lithuania collect data on ethnicity.<sup>559</sup> Adding questions about exposure to discrimination into future survey forms would allow different types of direct discrimination to be assessed. However, insertion of such additional questions would require additional human and financial resources.

The LFS, EU-SILC and Population and Housing Census all collect data on age. It should be noted that the aforementioned surveys are conducted in Lithuania in compliance with the EC Regulation and no additional indicators/variables are inserted. In addition, these official national surveys do not collect data on sexual orientation, gender identity or discrimination involving multiple grounds.

One more survey conducted in Lithuania in accordance with EU standards is the European Social Survey (ESS). In Lithuania, the ESS has been carried out on a biannual basis since 2008 as part of the international survey. The survey is conducted by Kaunas University of Technology and UAB Baltijos Tyrimai (Baltic Surveys), and is funded by the Research Council of Lithuania. The survey collects data on people's subjective wellbeing, mental health, disability, affiliation to a national minority, religious identity and age, as well as perceived discrimination. It should be noted that in Lithuania this survey uses a

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<sup>554</sup> See the following link: [http://osp.stat.gov.lt/documents/10180/0/gyvenimo+salygos\\_metainfo-EN](http://osp.stat.gov.lt/documents/10180/0/gyvenimo+salygos_metainfo-EN).

<sup>555</sup> Regulation (EC) No. 1553/2005 of the European Parliament and of the Council amending Regulation (EC) No. 1177/2003 concerning Community statistics on income and living conditions (EU-SILC).

<sup>556</sup> Population by Nationality, Native Language and Religion. Results of the 2011 Population and Housing Census of the Republic of Lithuania. Statistics Lithuania, available in Lithuanian at: [https://osp.stat.gov.lt/documents/10180/217110/Gyv\\_kalba\\_tikyba.pdf/1d9dac9a-3d45-4798-93f5-941fed00503f](https://osp.stat.gov.lt/documents/10180/217110/Gyv_kalba_tikyba.pdf/1d9dac9a-3d45-4798-93f5-941fed00503f).

<sup>557</sup> Administrative data: data in public and departmental registers, information systems, databases and documents of public and local authorities, institutions and agencies, enterprises and the Bank of Lithuania, intended for public administration, supervision and/or control.

<sup>558</sup> Information provided by a representative of Statistics Lithuania. Received by email, 15 December 2015.

<sup>559</sup> Okunevičiūtė Neverauskienė, L., Gruževskis, B. (2009), Institute of Labour and Social Research at the Lithuanian Social Research Centre, *Lygybės statistikos pagrindai. Nacionalinis lygybės statistikos rengimo veiksmų planas* [Fundamentals of equality statistics. National Action Plan for the Development of Equality Statistics], available at: [www.lygybe.lt/lt/tarnybos-leidiniai.html](http://www.lygybe.lt/lt/tarnybos-leidiniai.html), accessed on 9 December 2015.

source questionnaire in English which is translated into Lithuanian and Russian.<sup>560</sup> In addition, efforts are taken to ensure that the ESS in Lithuania is in line with EU regulations and directives in the area of data protection.

Apart from these surveys (LFS, EU-SILC, ESS and Eurobarometer), there are no official surveys carried out on a national level in Lithuania which would be relevant in the context of this report.

**The number of complaints lodged and investigations initiated by the Office of the Equal Opportunities Ombudsperson (OEEO).** OEEO keeps records of the complaints received and investigations initiated by the Office and publishes the data in its annual activity reports, broken down by discrimination grounds.<sup>561</sup> Reports presented to the Parliament of the Republic of Lithuania are public and can be accessed on the OEEO website.

**Data provided by law enforcement establishments (number of judicial discrimination proceedings, hate crimes).** Records of offences committed on the grounds of race, nationality and sexual orientation have been kept in Lithuania since 2009. Data are recorded and published online on a regular basis by the Lithuanian Ministry of the Interior. Surveys by NGOs have shown that under-reporting of racist crimes appears to be a serious problem in Lithuania and the number of racist crimes and the types of crimes recorded by the state is significantly lower than those recorded by civil society organisations in 2013.<sup>562</sup>

**Information collected by NGOs on their members and NGO surveys.** The role of NGOs is also important in assessing the work of law enforcement institutions in relation to racially motivated crimes. In addition, NGOs are the ones who often possess information about their members. NGOs play an important role in initiating the collection of data on different grounds. However, the activities and funding of Lithuanian NGOs are often based on project-based activities. Therefore, insufficient funding results in a lack of systematic data collection. Discrimination testing was first used in discrimination proceedings in Lithuania by the Human Rights Monitoring Institute in 2008. This method helped to prove discrimination on the ground of ethnic origin in employment. This case led to the development of strategic case practice which is used among NGOs. Such a practice is missing among governmental organisations.

**Sociological survey data. Attitude surveys.** Data from sociological surveys are used by competent institutions for the preparation of relevant programmes. Public attitudes towards social minorities (groups) in Lithuania have been analysed by the Institute for Ethnic Studies since 2005 by conducting public attitude surveys.

Sociological surveys are usually performed by private companies on the basis of service contracts and are small scale. Researchers often use data from administrative sources or Statistics Lithuania. Competent authorities are often requested by researchers to provide data broken down into smaller categories or not published (for example, distribution of ethnic minorities in smaller regions).<sup>563</sup>

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<sup>560</sup> Morkevicius V., (2012), *Europos socialinis tyrimas: patikimas viešosios politikos analizės ir sprendimų duomenų šaltinis* [European Social Survey: Reliable source for public policy analysis and decisions].

<sup>561</sup> Broken down by ethnicity, nationality, religion, social status, beliefs or convictions, age, sexual orientation, disability, racial or ethnic origin, religion or belief. Intersex or transgender people are included in sexual orientation.

<sup>562</sup> Alternative Report on Lithuania's sixth, seventh and eighth periodic reports to the UN Committee on the Elimination of Racial Discrimination (CERD): [http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/LTU/INT\\_CERD\\_NGO\\_LTU\\_22231\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/LTU/INT_CERD_NGO_LTU_22231_E.pdf).

<sup>563</sup> Interview with representatives from the Institute for Ethnic Studies at the Lithuanian Social Research Centre: Director Andrius Mickevičius, 17 December 2015.

#### 4. Key issues

The first most important step towards the creation of national equality statistics was made in 2009, when a draft national action plan for equality data collection was prepared. In 2011, within the framework of a PROGRESS project implemented by OEOO, these activities were updated. The outcomes of the project included an analysis of the statistical indicators suitable for the collection of equality statistics.<sup>564</sup> The emphasis was placed on the need to prepare a national action plan for equality data collection and to approve it by an appropriate legal act which is not yet in place.<sup>565</sup> In 2010, the Parliament of the Republic of Lithuania passed a resolution proposing that the Government approve the National Action Plan for Equality Data Collection, prepared on the basis of OEOO reports from 2008-09, for a maximum period of five years. It is important to note that the Government did not approve this proposal nor allocate any funds for its implementation.<sup>566</sup> In addition, within the framework of the project, a recommendation was provided to align this draft plan with the National Anti-discrimination Programme and other related programmes. It is worth noting that at the preparatory stages of the Interdepartmental Action Plan for the Promotion of Non-discrimination for 2015-2020 the OEOO suggested including a measure concerning equality data collection in the Plan. However, this measure was not included in the Plan.<sup>567</sup>

No progress in equality data collection was achieved in 2014-2016 and the need to develop the equality data collection system in Lithuania remains significant.<sup>568</sup>

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<sup>564</sup> In cooperation with Statistics Lithuania, the Institute of Labour and Social Research at the Lithuanian Social Research Centre produced the publication *Lygybės statistikos pagrindai. Nacionalinis lygybės statistikos rengimo veiksmų planas* [Fundamentals of equality statistics. National Action Plan for the Development of Equality Statistics].

<sup>565</sup> Okunevičiūtė Neverauskienė, L., Gruževskis, B. (2009), Institute of Labour and Social Research at the Lithuanian Social Research Centre, *Lygybės statistikos pagrindai. Nacionalinis lygybės statistikos rengimo veiksmų planas* [Fundamentals of equality statistics. National Action Plan for the Development of Equality Statistics], available at: [www.lygybe.lt/lt/tarnybos-leidiniai.html](http://www.lygybe.lt/lt/tarnybos-leidiniai.html), accessed on 9 December 2015.

<sup>566</sup> Resolution No XI-1028 (2010) of the Parliament of the Republic of Lithuania on Reports by the Office of the Equal Opportunities Ombudsperson of 2008 and 2009, available in Lithuanian at: [www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=381610&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=381610&p_tr2=2).

<sup>567</sup> Interview with a representative of the Lithuanian Gay League, 18 December 2015.

<sup>568</sup> Okunevičiūtė Neverauskienė, L., Gruževskis, B. (2009), Institute of Labour and Social Research at the Lithuanian Social Research Centre. *Lygybės statistikos pagrindai. Nacionalinis lygybės statistikos rengimo veiksmų planas* [Fundamentals of equality statistics. National Action Plan for the Development of Equality Statistics], available at: [www.lygybe.lt/lt/tarnybos-leidiniai.html](http://www.lygybe.lt/lt/tarnybos-leidiniai.html), accessed on 9 December 2015.



## 18. Luxembourg

**Experts: Claudia Hartmann-Hirsch and Sandie Richard-Devaux**

### 1. Relevant legal framework

There is no legal text imposing an obligation to collect equality data in Luxembourg. The two anti-discrimination directives (2000/43/EC and 2000/78/EC) were transposed within the General Discrimination Act of 2006<sup>569</sup> without any data collection obligation. The following grounds are covered: religion or political opinions / convictions, disability, age, sexual orientation, true or alleged race or ethnic group.<sup>570</sup> Several articles of this act have been included in the Employment Code (Articles 251-261).<sup>571</sup>

The Amended Act on Data Protection of 2002<sup>572</sup> concerns the protection of personal data, introduces protection principles, regulates the access to and use of this data for public and private entities. Article 6 of the Amended Act on Data Protection of 2002 prohibits the collection and processing of “sensitive” data on ethnic and racial origins, political opinions, religious or philosophical convictions, membership of unions, health, sexual life and genetics – gender identity is missing. Luxembourg has a long and stable tradition of prohibiting the collection of personal data, i.e. *sensitive* data, which is the purpose of this study, in accordance with the Amended Act on Data Protection of 2002 and Directive 95/46/EC: Articles 8.1 to 8.4 have been fully transposed. The Amended Act on Data Protection of 2002 in its initial draft of 2002 contained some exemptions, which were at the time considered to be too restrictive. Thus, the act of 27 July 2007 modified the Amended Act on Data Protection of 2002 mainly in the sense of extending the existing exemptions in compliance with Directive 95/46/EC. Another objective was to ease notification and authorisation procedures, enabling public and private entities to collect and analyse sensitive data within a clearly defined project.

The following exemptions were adopted with the act of 27 July 2007 (cf. coordinated text: see last footnote). The footnotes contain the relevant articles from Luxembourg's legal texts.

For the collection of personal, i.e. sensitive data, public and private bodies (those which allocate benefits, research institutes, companies, etc.) need to either “notify” (Article 12) or ask the controlling body, the National Commission for Data Protection (CNPd),<sup>573</sup> for authorisation (Article 13 of the act of 2002) in order to be entitled to collect and analyse these data. Notification means to inform the CNPD about a project (e.g. a poll, a one-off survey, a longitudinal panel, surveillance, etc.) for which the respective private or public

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<sup>569</sup> Law of 28 November 2006

1. transposing Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin;  
2. transposing Council Directive 2000/78/EC of the Council of 27 November 2000 establishing a general framework for equal treatment in employment and occupation;  
3. modifying the Labour Code and introducing in Book II a new title V on equality of treatment in the area of employment and work;  
4. modifying articles 454 and 455 of the Penal Code;  
5. modifying the law of 12 September 2003 on disabled persons.

<http://www.legilux.public.lu/rgl/2006/A/3584/A.pdf>.

<sup>570</sup> Article 1 of the act of 2006 in French : ‘*Toute discrimination directe ou indirecte fondée sur la religion ou les convictions, l'handicap, l'âge, l'orientation sexuelle, l'appartenance ou non appartenance, vraie ou supposée, à une race ou ethnie.*’

<sup>571</sup> Luxembourg, Employment Code (*Code du travail*) for the legally defined quota system:

[http://www.legilux.public.lu/leg/textescoordonnes/codes/code\\_travail/Code\\_du\\_Travail.pdf](http://www.legilux.public.lu/leg/textescoordonnes/codes/code_travail/Code_du_Travail.pdf).

<sup>572</sup> Coordinated text of the act of 8 August 2007 based on the act of 2 August 2002 (abbreviation: Act on data protection of 2002) concerning the protection of individuals with regard to the processing of personal data: <http://www.legilux.public.lu/leg/a/archives/2007/0131/2007A2339A.html>.

<sup>573</sup> *Commission Nationale pour la protection des données*: <https://cnpd.public.lu/en/legislation/droit-lux/index.html>.

body needs access to personal and also sensitive data. An authorisation procedure must be undertaken when two datasets are to be used jointly.

| Consent <sup>574</sup> | Employment <sup>575</sup> | Health/life <sup>576</sup> | Public <sup>577</sup> | Members <sup>578</sup> | Legal claim <sup>579</sup> | Medicine <sup>580</sup> | Public interest – Other <sup>581</sup> |
|------------------------|---------------------------|----------------------------|-----------------------|------------------------|----------------------------|-------------------------|--|
| X                      |                           | X                          |                       | X                      | X                          | X                       | X                                      |

However, the lack of exhaustive data is not considered as a sufficient argument to modify or eliminate the legal prohibition. Surveys and polls are considered by authorities and NGOs to be the main path to obtaining reliable sensitive data which is otherwise protected by law. None of the actors (authorities or NGOs) wants to do away with the prohibition regarding the collection of sensitive data (Article 6 of the Amended Act on Data Protection of 2002) in order to have exhaustive data via e.g. mandatory registering of the indicator “disability”.<sup>582</sup> There is a broad consensus to keep the prohibition, due to the experience of German occupation and the Shoah.

Given Luxembourg’s legal framework (Amended Act on Data Protection of 2002), the collection of personal data – if not notified or authorised – can be subject to penalties (Article 6 (4)), while the non-collection of personal data is not. Thus employers are not supposed to collect data on disability even within a legal framework which designs quotas (Articles 561 to 564).<sup>583</sup> De jure, the obligation exists, de facto it has never been implemented; authorities opt for voluntary recruitment of persons with disabilities by companies. In terms of data collection, the Employment Code defines certain configurations such as ‘security and health of the employee’ which “can” - and not “must” – be implemented by the employer in accordance with the Amended Act on Data Protection of 2002 (Article 261-1; thus with the respective notification procedure).

## 2. Definitions and categories used to collect equality data

There is no legal text concerning an obligation to collect equality data, thus no categories and no regularity are defined by law.

<sup>574</sup> Consent: sensitive data may be collected when the data subject has given his/her informed consent in accordance with Art. 6 (2) a) of the act of 2002.

<sup>575</sup> Employment: sensitive data may be collected when it is necessary for an employer to fulfil their obligations by virtue of the employment legislation. The Employment Code does not foresee any obligation in terms of equality data collection with exception of health and security items: Art. 261 of the Employment Code (*Code du travail*): [www.legilux.public.lu/leg/textescoordonnes/codes/code\\_travail/Code\\_du\\_Travail.pdf](http://www.legilux.public.lu/leg/textescoordonnes/codes/code_travail/Code_du_Travail.pdf).

<sup>576</sup> Health/Life: sensitive data may be collected when it is necessary for the health of the data subject and it is impossible to obtain his/her consent in accordance with Art. 6 (2) c) of the act of 2002.

<sup>577</sup> Public: sensitive data may be collected when the data subject has made the data public him/herself.

<sup>578</sup> Members: sensitive data may be collected by associations or organisations regarding their members in accordance with Art. 6 (2) d) of the act of 2002.

<sup>579</sup> Legal claims: sensitive data may be collected when it is necessary to establish, exercise or defend legal claims before a court of law in accordance with Art. 6 (2) f) of the act of 2002.

<sup>580</sup> Medicine: sensitive data may be collected when it is necessary for the purposes of preventive medicine, medical diagnosis, care/treatment or health management in accordance with Art. 7 (1) (2) (3) of the act of 2002.

<sup>581</sup> Public interest/other: sensitive data may be collected in other situations, as provided for by law, when required for reasons of substantial public interest in accordance with Art. 6 (2) g) of the act of 2002.

<sup>582</sup> According to interviews with the Ministry of Family and Integration, as well as with different NGOs in January 2016.

<sup>583</sup> CF. Employment Code (*Code du travail*) for the legally defined quota system: [www.legilux.public.lu/leg/textescoordonnes/codes/code\\_travail/Code\\_du\\_Travail.pdf](http://www.legilux.public.lu/leg/textescoordonnes/codes/code_travail/Code_du_Travail.pdf).

Data on age and sex are used within all areas and by all public institutions, mostly in an ongoing way, but not with the objective of analysing equality. The ID-number ("matricule") contains the individual's date of birth and sex. It is used for more or less all public datasets: for all social security issues (health, care, pension insurance and benefits), taxes, wages, etc. Thus ministries and public bodies which allocate benefits and other provisions know the numbers of recipients of a certain benefit (e.g. benefit for severely disabled persons or beneficiaries of care insurance); the uptake is known, but not the non-uptake and hence not the precise number of persons with disabilities. The National Action Plan for persons with disabilities<sup>584</sup> refers to Article 31 of the UNCRPD with the objective of obtaining reliable data regarding specific policies and measures.

### 3. Practical implementation

European surveys like the LFS and the LU-SILC panel (household budget and tourism survey) fully respect the data protection principles of Directive 95/46/EC and the Data Protection Act of 2002. Sensitive data are not collected, with the exception of specific modules, such as the 'employment of disabled people' section of the LFS 2011.<sup>585</sup> None of the studies, surveys and polls asks the interviewee for his/her racial and ethnic origins or for gender identity.

Breakdown is possible by age, gender and nationality, but not by other equality indicators. The 2007 and 2011 waves of LU-SILC contained the proxy 'mother's/father's country of birth'. All these surveys are run by STATEC.<sup>586</sup> The European Social Survey (2002 and 2004 waves),<sup>587</sup> run by CEPS/INSTEAD, collects data on age, gender and nationality as well as on disability (C 8), religion (C 9 ss), appreciation of groups ethnically different from Luxembourgers (B 35) and parents' country of birth (as proxy).<sup>588</sup> The European Social Survey (2002 and 2004 waves)<sup>589</sup> collects data on age, gender and nationality. It also asks for the proxy 'mother's and father's country of birth', aiming to obtain better knowledge about the migration background of residents; this data might also be used as a proxy for racial and ethnic origin.

National datasets like the *Répertoire général des personnes physiques* (RGPP)<sup>590</sup> and the Social Security dataset<sup>591</sup> ask for age, gender and nationality, but not for other equality indicators.

Access to all these datasets is given to any private or public institution or to any individual if the notification or authorisation procedure (Data Protection Act of 2002) has been undertaken and accepted by the CNPD.

<sup>584</sup> Ministry for Family and Integration, National Action Plan for the Implementation of the UN Convention on the Rights of Persons with Disabilities [*Ministerium für Familie und Integration, Aktionsplan der Luxemburger Regierung zur Umsetzung der UN-Konvention über die Rechte von Menschen mit Behinderungen*]: <http://www.mfi.public.lu/publications/Handicap/AktionsplanDE.pdf>.  
<http://www.mfi.public.lu/publications/Handicap/AktionsplanDE.pdf>.

<sup>585</sup> Cf. for LFS: [http://ec.europa.eu/eurostat/statistics-explained/index.php/EU\\_labour\\_force\\_survey\\_-\\_ad\\_hoc\\_modules](http://ec.europa.eu/eurostat/statistics-explained/index.php/EU_labour_force_survey_-_ad_hoc_modules). Idem for the other EU surveys; these modules are well known at European level.

<sup>586</sup> [www.statec.public.lu](http://www.statec.public.lu); for LFS: <http://www.statistiques.public.lu/fr/enquetes/espace-menages/forces-travail/> for EU-SILC: <http://www.statistiques.public.lu/fr/enquetes/espace-menages/EU-SILC/index.html>.

<sup>587</sup> [http://www.europeansocialsurvey.org/data/country\\_index.html](http://www.europeansocialsurvey.org/data/country_index.html).

<sup>588</sup> [www.europeansocialsurvey.org/docs/round2/fieldwork/luxembourg/english/ESS2\\_questionnaires\\_LU\\_eng.pdf](http://www.europeansocialsurvey.org/docs/round2/fieldwork/luxembourg/english/ESS2_questionnaires_LU_eng.pdf).

<sup>589</sup> [http://www.europeansocialsurvey.org/data/country\\_index.html](http://www.europeansocialsurvey.org/data/country_index.html).

<sup>590</sup> The General Register of Natural Persons (*Répertoire général des personnes physiques*) holds data (no sensitive data) on all residents, according to the Act of 19 June 2013 *relative à l'identification des personnes physiques, au registre national des personnes physiques, à la carte d'identité, aux registres communaux des personnes physiques*: <http://www.legilux.public.lu/leg/a/archives/2013/0107/2013A1582A.html>.

<sup>591</sup> General Inspectorate of Social Security (*Inspection Générale de la Sécurité sociale*) (data provider for social security): [www.mss.public.lu](http://www.mss.public.lu).

All surveys and public datasets ask for nationality and some use the proxy 'parents' nationality/ies' and/or 'country of birth of the interviewee and/or the parents' in order to improve knowledge about migration trends, and not in terms of an equality indicator.

Two surveys/polls (the Equality Body (CET) polls and the European Value Study)<sup>592</sup> ask the interviewee about his/her religion, disability, sexual orientation via self-identification; cf. the Equality Body (CET) poll or the European Value Study. CET's main objective is to find out more about discrimination as there is a modest complaint tradition. Self-identification is one part of the poll and discrimination experiences (self-identification and third-party categorisation) is the second one, in accordance with Article 9 of the General Discrimination Act of 2006 obliging the CET 'to monitor and to analyse' equal treatment.<sup>593</sup> None of the polls and surveys (CET,<sup>594</sup> EVS,<sup>595</sup> ESS<sup>596</sup> etc.) tackled gender identity.

In 2005, a study on discrimination in employment with reference to the directives 2000/43/EC and 2000/78/EC was undertaken by CEPS/INSTEAD through quantitative and qualitative interviews with companies' staff representatives.<sup>597</sup> No data existed before the launch of this project.

Given the exhaustive social security data available, it is easier to conduct a quantitative analysis of discrimination on the ground of age. In 2005/06, stimulated by the European Employment Policies (European Social Fund), different publications highlighted the increasingly younger labour force, with widespread discrimination of elderly workers.<sup>598</sup>

Discrimination testing has never been used in Luxembourg. There is no intention to demonstrate explicitly the violation of the principle of equal treatment. Testing might enhance an open conflict instead of a bilateral solution of the violation.

The "political" and legal reference for CET polls or studies like those of Besch et al., 2005 is the General Discrimination Act of 2006. There is no link to the EU-wide surveys like EFT, EU-SILC, etc.

#### 4. Key issues

No legal text exists concerning an obligation to collect equality data. This results in a lack of data for most of the targeted grounds, with the exception of age and gender, which are collected for databases like the Census, the Social Security database and European and national surveys such as EU-SILC, LFS, FBS, etc. The collection of gender

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<sup>592</sup> Legrand, M., (ed.) (2002), *Les valeurs au Luxembourg* [Values in Luxembourg], Luxembourg: edition St. Paul.

Idem for the EVS of 2008, run by CEPS/INSTEAD: [www.ceps.lu/?type=module&id=129](http://www.ceps.lu/?type=module&id=129).

<sup>593</sup> E.g. CET / TNS-Ilres, 2015, *Observatoire des discriminations*: <http://cet.lu/fr/?s=sondage+TNS+ILRES>.

<sup>594</sup> CET (2015), poll on discrimination: <http://cet.lu/wp-content/uploads/2015/07/TNS-ILRES-version-impression.pdf> and act of 2006.

<sup>595</sup> EVS was conducted in 1999 by SESOPI: Legrand, M. (ed.), and in 2008 by CEPS/INSTEAD: <http://www.statistiques.public.lu/fr/publications/autresacteurs/series-ceps/working-papers-ceps/2011/18-2011/index.html>.

<sup>596</sup> ESS was conducted in 2002 and in 2004 by CEPS/INSTEAD [www.europeansocialsurvey.org/docs/round2/fieldwork/luxembourg/english/ESS2\\_questionnaires\\_LU\\_eng.pdf](http://www.europeansocialsurvey.org/docs/round2/fieldwork/luxembourg/english/ESS2_questionnaires_LU_eng.pdf).

<sup>597</sup> Besch, S., Bodson, L., Hartmann-Hirsch, C., Legrand, M. (2005), *Discrimination à l'emploi, rapport au Commissariat du Gouvernement aux Etrangers* [Discrimination in employment, report to the Government Commission on Foreign Nationals]: [http://www.olai.public.lu/en/publications/etude/rapport\\_discrimination.pdf](http://www.olai.public.lu/en/publications/etude/rapport_discrimination.pdf). Age was the ground which presented the most numerous experiences of discrimination. This was/is due to an extremely young labour force composed mainly of migrants and cross-border commuters, with nationals only making up a third of the labour force in the private economic sector.

<sup>598</sup> CEPS/INSTEAD, *Population & Emploi* [Population and employment], no. 19 by Hartmann-Hirsch 2006, nos. 10-12 by Zanardelli, nos. 14 and 15 by Leduc, no. 16 by Genevois: [www.ceps.lu](http://www.ceps.lu).

and age data is not motivated by a need for equality data, but by general sociological or public interests.

For nearly two decades, different European and international bodies have demanded reporting with quantitative data on the evolution of certain protected groups, such as persons with disabilities or Roma. Authorities, NGOs and research institutes / experts often need to demonstrate the non-existence of this data.<sup>599</sup> NGOs wish to have more convincing statistics for their lobbying.<sup>600</sup> However, all actors agree and underline the relevance of data protection measures acting as a safeguard for citizens, as defined by the Amended Act on Data Protection 2002. Neither the authorities nor NGOs plead in favour of mandatory registering of "sensitive" data, due to the experience of the German occupation and the Shoa. Luxembourg is certainly one of those Member States, very much like Germany,<sup>601</sup> which insist on maintaining the prohibition of the mandatory collection of sensitive data.

The non-existence of exhaustive sensitive administrative data is, no doubt, an obstacle to the evaluation of equality phenomena. Given more recent EU and international law, policies and strategies (e.g. Lisbon Strategy, the implementation of the UN Convention on the Rights of Persons with Disabilities, etc.), there is a demand mainly from European and international authorities and NGOs for more precise data, e.g. the number of persons with disabilities, in order to adapt legislation or policy measures. National, European and international opinions (ECRI, 2005 and 2012; CES, 2014, etc.)<sup>602</sup> on the situation in Luxembourg highlight the missing data on equality.

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<sup>599</sup> Cf. Reports to the Fundamental Rights Agency, e.g.: Hartmann-Hirsch, C. (2013), *Mapping data sources on Roma*: <http://fra.europa.eu/sites/default/files/situation-of-roma-2012-lu.pdf>.

<sup>600</sup> MiFa/OLAI, 2010, *NAP Plan d'action national d'intégration et de lutte contre les discriminations* [National Action Plan on integration and combating discrimination]: <http://www.olai.public.lu/fr/accueil-integration/mesures/plan-action-national/>.

<sup>601</sup> Cf. 'Die Frage, ob das deutsche Datenschutzrecht angepasst werden müsse, um Diskriminierung nachweisbar zu machen, sei klar mit Nein zu beantworten' [The answer to the question of whether German data protection law should be amended to make discrimination measurable is a clear No]. In *Datenerhebung zum Erweis ethnischer Diskriminierung* [Data collection to demonstrate ethnic discrimination]; [http://www.institut-fuer-menschenrechte.de/fileadmin/user\\_upload/PDF-Dateien/Protokolle/protokoll\\_fachgesprach\\_datenerhebung\\_zum\\_erweis\\_ethnischer\\_diskriminierung\\_12\\_06\\_2008.pdf](http://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/PDF-Dateien/Protokolle/protokoll_fachgesprach_datenerhebung_zum_erweis_ethnischer_diskriminierung_12_06_2008.pdf).

<sup>602</sup> ECRI (2005), *Third Report on Luxembourg*, §90, [http://hudoc.ecri.coe.int/XML/ECri/ENGLISH/Cycle\\_03/03\\_CbC\\_eng/LUX-CbC-III-2006-20-ENG.pdf](http://hudoc.ecri.coe.int/XML/ECri/ENGLISH/Cycle_03/03_CbC_eng/LUX-CbC-III-2006-20-ENG.pdf) and ECRI (2012), *Fourth report on Luxembourg*, §131, <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Luxembourg/LUX-CbC-IV-2012-004-ENG.pdf>.

CES (2014), <http://www.asti.lu/wp-content/uploads/2014/06/Avis-CES-6.6.20141.pdf>.

## 19. Malta

**Expert: Romina Bartolo**

### 1. Relevant legal framework

There is no one specific law dealing with equality data collection in Malta, but there are laws that mention the collection of data which could also include equality data. The Census Act makes provisions for the taking of the census for Malta from time to time and among the focus areas that can be included in the census there are the protected grounds of age and disability.<sup>603</sup>

The Data Protection Act transposes Directive 95/46/EC.<sup>604</sup> The Act defines sensitive personal data as data that reveal race or ethnic origin, political opinions, religious or philosophical beliefs, membership of a trade union, health or sex life. Disability constitutes "sensitive personal information" since it reveals health issues. The Act applies to the processing of personal data, wholly or partly by automated means or to processing other than by automated means where such personal data applies to a filing system or is intended to form part of a filing system.<sup>605</sup> The Data Protection Act prohibits the collection of data in conformity with Article 8.1 of the Data Collection Directive and the exemptions contained in the Directive are also included in the national legislation.

Sensitive personal data may be processed if the data subject has given their explicit consent to processing or has made the data public. Such data may also be processed, if appropriate safeguards are adopted and the processing is necessary in order for the controller to be able to comply with their duties or exercise their rights under any law regulating the conditions of employment or the vital interests of the data subject. Also of some other person if the data subject is physically or legally incapable of giving their consent or legal claims will be able to be established, exercised or defended. Additionally, any person or other entity (not a commercial body or entity, with political, philosophical, religious or trade union objects) may, in the course of their legitimate activities and with appropriate guarantees, process sensitive personal data concerning the members of the respective body or entity and such other persons who by reason of the objects of the body or entity have regular contact therewith. However, such data may be provided to a third party only if the data subject explicitly consents to it.

Sensitive personal data may be processed for health and hospital care purposes, provided it is necessary for preventive medicine and the protection of public health, medical diagnosis, healthcare or treatment or management of health and hospital care services as far as the data are processed by a health professional or other person subject to the obligation of professional secrecy.

Data which are personal and sensitive may be processed as well in so far it has been prescribed by the Minister responsible for freedom of information and data protection having regard to an important public interest.

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<sup>603</sup> Malta, Census Act, Chapter 118, Laws of Malta, adopted in 1948, Schedule to the Act: <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8654&l=1>, accessed 4 March 2016.

<sup>604</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, Official Journal L 281, 23 November 1995 P. 0031 – 0050.

<sup>605</sup> Malta, Data Protection Act, Chapter 440, Laws of Malta, adopted in 2001, Article 12: <https://idpc.gov.mt/en/Legislation/CAP%20440.pdf>, accessed 4 March 2016.



| Consent          | Employment       | Health/life      | Public           | Members          | Legal claim      | Medicine         | Public interest – Other |
|------------------|------------------|------------------|------------------|------------------|------------------|------------------|-------------------------|
| X <sup>606</sup> | X <sup>607</sup> | X <sup>608</sup> | X <sup>609</sup> | X <sup>610</sup> | X <sup>611</sup> | X <sup>612</sup> | X <sup>613</sup>        |

Moreover, the Act provides for additional exemptions and in fact sensitive personal information may be processed for research and statistics purposes, provided that the processing is necessary for the performance of an activity that is carried out in the public interest or in the exercise of official authority vested in the controller or in a third party to whom the data are disclosed. Such processing would be deemed necessary in the case of statistics when there is approval by the Commissioner for Data Protection directly and, in the case of research, by the Commissioner on the advice of a research ethics committee of an institution recognised by the Commissioner.

The Act specifies the requirements for processing, that is, that the personal data are processed fairly and lawfully and in accordance with good practice and only collected for specific, explicitly stated and legitimate purposes. To this end, personal data cannot be processed for any purpose that is incompatible with that for which the information is collected. The data must be adequate and relevant in relation to the purposes of the processing and no more personal data must be processed than is necessary having regard to the purposes of the processing.

Moreover, the controller must ensure that personal data that are processed are correct and, if necessary, up-to-date and all reasonable measures are taken to complete, correct, block or erase data to the extent that such data are incomplete or incorrect, having regard to the purpose for which they are processed. Personal data cannot be kept for a period longer than is necessary, having regard to the purposes for which they are processed.

Any person who contravenes the provisions of the law with regard to the processing of personal sensitive data shall be guilty of an offence and shall on conviction be liable to a fine of not less than €120 and not more than €23,000 or to imprisonment for six months or to both fine and imprisonment.

The Equal Opportunities (Persons with Disability) Act defines disability and discrimination on the ground of disability and covers various issues regarding disability such as accessibility, employment, education, the provision of goods and services, and accommodation. The Act also sets up the National Commission Persons with Disability and lists its functions and powers<sup>614</sup>. The Act includes the power of the Commission to

<sup>606</sup> Malta, Data Protection Act, Chapter 440, Laws of Malta, Section 12(2) (a).

<sup>607</sup> Malta, Data Protection Act, Chapter 440, Laws of Malta, Section 13(a).

<sup>608</sup> Malta, Data Protection Act, Chapter 440, Laws of Malta, Section 13(b).

<sup>609</sup> Malta, Data Protection Act, Chapter 440, Laws of Malta, Section 12(2) (b).

<sup>610</sup> Malta, Data Protection Act, Chapter 440, Laws of Malta, Section 14.

<sup>611</sup> Malta, Data Protection Act, Chapter 440, Laws of Malta, Section 13(c).

<sup>612</sup> Malta, Data Protection Act, Chapter 440, Laws of Malta, Section 15.

<sup>613</sup> Malta, Data Protection Act, Chapter 440, Laws of Malta, Section 12(1).

<sup>614</sup> The name of the Commission in Maltese is *Kummissjoni Nazzjonali Persuni b'Dizabilita' (KNPD)* <http://www.knpd.org/> accessed 22 March 2016.



collect, analyse and publish statistics related to the ground of disability.<sup>615</sup> The Act authorises the collection of information and describes how such information is to be handled. To this end, an employer cannot conduct or require any medical examination or otherwise make any enquiries of an applicant for employment or of any of their employees as to whether such applicant or employee is a person with a disability or as to the nature or severity of such disability, except to ascertain the ability of the applicant to perform job-related functions or to identify the costs involved in any adaptations that may be required as a result of such disability.<sup>616</sup>

After an offer of employment has been made to an applicant for employment and, prior to the commencement of such employment, an employer may conduct or require a medical examination or make the offer of such employment conditional on the results of such examination if all applicants for this same kind of employment are made subject to such an examination.<sup>617</sup> Whenever such an examination is conducted, any information obtained regarding the medical condition and history of the applicant in relation to their disability shall be collected and maintained on separate forms, kept in separate medical files and treated as a confidential medical record.<sup>618</sup> However, if the applicant is subsequently employed the employer may inform supervisors and managers within the same establishment regarding any alterations that may be required and first aid personnel regarding any emergency treatment that might be required by such an applicant because of their disability or regarding any special precautions that might need to be taken because of the said disability.<sup>619</sup>

The collection of data on people with disabilities is also permitted under Chapter 210 of the Laws of Malta Persons with Disability (Employment) Act<sup>620</sup> whereby the Employment and Training Corporation<sup>621</sup> has the authority to set up and maintain a register of people with disabilities.

## **2. Definitions and categories used to collect equality data**

The social surveys carried out by the National Statistics Office (NSO), including the Labour Force Survey, collect information disaggregated by age and sex. With regard to disability, the NSO follows the guidelines of EU law and the definitions used are identical to the ones used in the Labour Force Survey.<sup>622</sup> With regard to the Census, equality data that is collected relates to sex, age and disability.<sup>623</sup> The National Commission for the Promotion of Equality has a remit on sex/gender and family responsibilities, sexual orientation, age, religion or belief, racial or ethnic origin and gender identity, gender expression or sex characteristics in employment, banks and financial institutions as well as education; and racial/ethnic origin and gender in the provision of goods and services and their supply. The National Commission Persons with Disability has a remit on disability. Both equality bodies collect equality data for specific research projects (usually through EU funding) and not on a regular basis. The only regular data that both the National Commission for the Promotion of Equality and the National Commission Persons with Disability collect are those with regard to complaints lodged with their offices, information which is in turn published in their annual reports. The data are extracted

<sup>615</sup> Malta, Equal Opportunities (Persons with Disability) Act, Chapter 413, Laws of Malta, adopted in 2000, Article 22 (o) <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8879&l=1> (accessed 1 March 2016).

<sup>616</sup> Malta, Equal Opportunities (Persons with Disability) Act, Chapter 413, Laws of Malta, Section 8(1).

<sup>617</sup> Malta, Equal Opportunities (Persons with Disability) Act, Chapter 413, Laws of Malta, Section 8(2).

<sup>618</sup> Malta, Equal Opportunities (Persons with Disability) Act, Chapter 413, Laws of Malta, Section 8(3).

<sup>619</sup> Malta, Equal Opportunities (Persons with Disability) Act, Chapter 413, Laws of Malta, Section 8(4).

<sup>620</sup> <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8718&l=1> accessed 1 March 2016.

<sup>621</sup> <http://www.etc.gov.mt/Index.aspx>, accessed 4 March 2016.

<sup>622</sup> [http://ec.europa.eu/eurostat/cache/metadata/en/hlth\\_dsb\\_prv\\_esms.htm](http://ec.europa.eu/eurostat/cache/metadata/en/hlth_dsb_prv_esms.htm), accessed 4 March 2016.

<sup>623</sup> [https://nso.gov.mt/en/publications/Publications\\_by\\_Unit/Documents/01\\_Methodology\\_and\\_Research/Census2011\\_PreliminaryReport.pdf](https://nso.gov.mt/en/publications/Publications_by_Unit/Documents/01_Methodology_and_Research/Census2011_PreliminaryReport.pdf), accessed 4 March 2016.

from the respective databases of the equality bodies. The annual reports containing such data are tabled in Parliament.

The Equal Opportunities (Persons with Disability) Act defines disability as a long-term physical, mental, intellectual or sensory impairment which in interaction with various barriers may hinder an individual's full and effective participation in society on an equal basis with others. The Gender Identity, Gender Expression and Sex Characteristics Act<sup>624</sup> defines "gender expression" as each person's manifestation of their gender identity, and/or the one that is perceived by others and "gender identity" as each person's internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance and/or functions by medical, surgical or other means) and other expressions of gender, including name, dress, speech and mannerisms.

### 3. Practical implementation

The main sources of equality data in Malta are the Labour Force Survey (LFS),<sup>625</sup> the Statistics on Income and Living Conditions (SILC) survey and EU-SILC<sup>626</sup> which are all published by the NSO.<sup>627</sup> They collect data on age. The NSO also publishes the Census which is a form of national stocktaking, providing a complete count of the population and living quarters. It is one of the oldest and most reliable sources of information about the number, characteristics, composition and condition of the population in Malta. It covers a wide spectrum of variables including the size of the population, age structure, citizenships and nationalities, educational attainment, economic activity, disability, housing and household amenities and other important socio-economic characteristics.<sup>628</sup>

The National Commission for the Promotion of Equality and the National Commission Persons with Disability have carried out various research studies. Although it has no written policies except with regard to gender mainstreaming, the National Commission for the Promotion of Equality emphasises the importance of using and producing data that are disaggregated into age, race/ethnic origin, sexual orientation, gender identity and religion/belief. In 2012, it carried out a study on immigrant and ethnic minority groups and housing in Malta, with regard to housing and racial discrimination in Malta.<sup>629</sup> The methodology used included international and local literature and official international and national surveys as well as a qualitative research exercise involving a four-tier research study. Another study was a research report on LGBT discrimination. This was a qualitative research study focusing on discrimination experienced by lesbian, gay, bisexual and transgender people.<sup>630</sup>

The Industrial Tribunal publishes decisions on discrimination cases within the labour market,<sup>631</sup> while the Ministry of Health, through its directorate for health information and research, collects data which are disaggregated by sex and age. However, sex is not

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<sup>624</sup> <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12312&l=1>, accessed 4 March 2016.

<sup>625</sup> [https://nso.gov.mt/en/News\\_Releases/View\\_by\\_Unit/Unit\\_C2/Labour\\_Market\\_Statistics/Pages/Labour-Force-Survey.aspx](https://nso.gov.mt/en/News_Releases/View_by_Unit/Unit_C2/Labour_Market_Statistics/Pages/Labour-Force-Survey.aspx), accessed 22 March 2016.

<sup>626</sup> [https://nso.gov.mt/en/nso/Sources\\_and\\_Methods/Unit\\_C1/Living\\_Conditions\\_and\\_Culture\\_Statistics/Pages/Unit-Profile.aspx](https://nso.gov.mt/en/nso/Sources_and_Methods/Unit_C1/Living_Conditions_and_Culture_Statistics/Pages/Unit-Profile.aspx).

<sup>627</sup> [https://nso.gov.mt/en/News\\_Releases/View\\_by\\_Unit/Unit\\_C1/Living\\_Conditions\\_and\\_Culture\\_Statistics/Pages/Statistics-on-Income-and-Living-Conditions.aspx](https://nso.gov.mt/en/News_Releases/View_by_Unit/Unit_C1/Living_Conditions_and_Culture_Statistics/Pages/Statistics-on-Income-and-Living-Conditions.aspx), accessed 22 March 2016

<sup>628</sup> <http://nso.gov.mt/metadata/reports.aspx?id=45>, accessed 4 March 2016.

<sup>629</sup> [http://ncpe.gov.mt/en/Documents/Our\\_Publications\\_and\\_Resources/Research/AG\\_1902/imnrb\\_research\(1\).pdf](http://ncpe.gov.mt/en/Documents/Our_Publications_and_Resources/Research/AG_1902/imnrb_research(1).pdf), accessed 4 March 2016.

<sup>630</sup> [http://ncpe.gov.mt/en/Documents/Projects\\_and\\_Specific\\_Initiatives/Think\\_Equal/lgbt\\_research.pdf](http://ncpe.gov.mt/en/Documents/Projects_and_Specific_Initiatives/Think_Equal/lgbt_research.pdf), accessed 4 March 2016.

<sup>631</sup> <https://dier.gov.mt/en/Industrial%20Relations/Industrial%20Tribunal/Decisions/Pages/2016-Decisions.aspx>, accessed 4 March 2016.

disaggregated for intersex and transgender. Very often NGOs have limited resources, both financial as well as human. However, some NGOs do carry out research and this gives them the opportunity to collect data and process and analyse them in order to produce a report.

The Malta Gay Rights Movement (MGRM) has carried out research studies and collected, processed and analysed data on LGBT people.<sup>632</sup> One such study, on the inclusion of transgender individuals in the labour market, aimed to gather local data on the experiences of transgender individuals residing in Malta and to explore the attitudes of employers towards transgender job seekers.<sup>633</sup> Moreover, MGRM carried out a survey on sexual orientation and gender identity discrimination against lesbian, gay, bisexual and transgender people in Malta, focusing on the experiences of LGBT respondents between 2006 and 2008 in order to provide an account of the pertaining scenario and to enable some assessment of the progress made since 2002 when the first survey was conducted.<sup>634</sup>

Another NGO which carries out studies on equality issues on a regular basis is the People for Change Foundation. This NGO has participated in various research studies and collected data focusing mostly on migrants and ethnic minorities.<sup>635</sup> They are also currently carrying out a research study on equality data entitled 'Counted: Ethnic and Equality Data Collection for Malta'.<sup>636</sup> The results of the study should be available by the end of the first quarter of 2016.

The Centre for Labour Studies, which is an independent, educational, documentation and research centre at the University of Malta, plays a significant role in the collection of equality data at national level. It regularly carries out research studies for various organisations, such as the European Foundation for the Improvement of Living and Working Conditions, or the European Commission, as well as collaborations at a national level in order to produce research studies on topics that relate to employment or industrial relations. It has carried out research such as on the impact of the Racial Equality Directive in 2009,<sup>637</sup> a mapping study on trade union practices in fighting discrimination and promoting diversity in 2008 and 2009, reflecting the activities initiated by unions to combat discrimination based on one or more of the following grounds – gender, racial and ethnic origin, religion and belief, disability, age and sexual orientation.<sup>638</sup>

The National Parliament through Parliamentary Questions<sup>639</sup> can be a source of information with regard to equality data. Data obtained through these parliamentary Questions, such as the number of people who have changed their gender identity<sup>640</sup> or how many same-sex couples have applied to be considered for adoption,<sup>641</sup> have become public.

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<sup>632</sup> <http://www.maltagayrights.org/publications.php>, accessed 4 March 2016.

<sup>633</sup> [www.maltagayrights.org/publicationsselected.php?title=ESF%2060:%20The%20Inclusion%20of%20Transgender%20Individuals%20into%20the%20Labour%20Market](http://www.maltagayrights.org/publicationsselected.php?title=ESF%2060:%20The%20Inclusion%20of%20Transgender%20Individuals%20into%20the%20Labour%20Market), accessed 4 March 2016.

<sup>634</sup> [www.maltagayrights.org/publicationsselected.php?title=LGBT Discrimination in Malta](http://www.maltagayrights.org/publicationsselected.php?title=LGBT%20Discrimination%20in%20Malta), accessed 4 March 2016.

<sup>635</sup> <http://www.pfcmalta.org/publications-and-research.html>, accessed 4 March 2016.

<sup>636</sup> <http://www.pfcmalta.org/counted-ethnic-and-equality-data-collection-for-malta.html>, accessed 4 March 2016.

<sup>637</sup> [https://fra.europa.eu/sites/default/files/fra\\_uploads/842-RED\\_Malta.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/842-RED_Malta.pdf), accessed 21 March 2016.

<sup>638</sup> <http://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=580&type=2&furtherPubs=yes>, accessed 21 March 2016.

<sup>639</sup> <http://pq.gov.mt/>, accessed 4 March 2016.

<sup>640</sup> <http://pq.gov.mt/PQWeb.nsf/7561f7daddf0609ac1257d1800311f18/c1257d2e0046dfa1c1257f01004464b6!OpenDocument>, accessed 4 March 2016.

<sup>641</sup> <http://pq.gov.mt/PQWeb.nsf/7561f7daddf0609ac1257d1800311f18/c1257d2e0046dfa1c1257ed5004ed7d7!OpenDocument>, accessed 4 March 2016.

#### 4. Key issues

NGOs complain about the lack of disaggregated data and claim the importance of backing national policy with such data that should be collected and analysed regularly.<sup>642</sup> Further criticism on the lack of disaggregated data emerges in submissions to the Committee on the Rights of the Child in December 2012 by a number of NGOs in Malta<sup>643</sup> calling for effective compilation and sharing of relevant statistics by the health authorities, such as the number of children with disabilities, the nature or severity of disabilities and data disaggregated by age and other grounds.<sup>644</sup> On the other hand it is important that personal sensitive data are protected and safeguarded. A case in point is the Freedom of Information Act Chapter 496 of the Laws of Malta<sup>645</sup> which gives the right to the public to access documents held by public authorities. However, there are limits imposed, including documents that contain personal data subject to the Data Protection Act. To this end, although there is a right to information, sensitive personal data are still protected.

In 2011, while carrying out investigations of complaints, the Office of the Information and Data Protection Commissioner, dealt with a case involving an alleged disclosure of personal and sensitive personal data by a particular entity.<sup>646</sup> The complainant in this case alleged that an officer within this entity had provided her ex-husband with various documents containing personal and sensitive personal data relating to her social security benefits, without her consent. An onsite inspection was carried out in order to physically examine the system/s employed by the entity so as to ensure that it had adequate technical and organisational measures in place in order to protect personal data against accidental destruction or loss or unlawful forms of processing. Although the Office of the Information and Data Protection Commissioner was satisfied that these measures were in place, it was, however, concluded that, due to the actions of the officer in question, the entity acted in breach of the provisions of the Data Protection Act and, as a consequence, infringed the privacy rights of the complainant. To this end the data controller was directed to ensure that training for the officials of the entity is enhanced to include a more rigid verification procedure which should be followed on receipt of a request to divulge personal and sensitive personal data.

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<sup>642</sup> [http://aditus.org.mt/Publications/ngoinputintegrationstrategy\\_03062015.pdf](http://aditus.org.mt/Publications/ngoinputintegrationstrategy_03062015.pdf), accessed 4 March 2016.

<sup>643</sup> <http://aditus.org.mt/Publications/crcdiscussiondayinput.pdf>, accessed 4 March 2016.

<sup>644</sup> [http://www.pfcmalta.org/uploads/1/2/1/7/12174934/pfc\\_submission\\_human\\_rights\\_consultation.pdf](http://www.pfcmalta.org/uploads/1/2/1/7/12174934/pfc_submission_human_rights_consultation.pdf), accessed 4 March 2016.

<sup>645</sup> <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8962>, accessed 4 March 2016.

<sup>646</sup> Information and Data Protection Commissioner, Annual Report, 2011, <http://idpc.gov.mt/dbfile.aspx/annualreport2011.pdf>, accessed 16 February 2016.

## 20. The Netherlands

### Expert: Tanja van den Berge

#### 1. Relevant legal framework

The Netherlands Personal Data Protection Act (PDPA) implements the Data Collection Directive 95/46/EC and regulates data collection in general.<sup>647</sup> Article 16 PDPA prohibits the collection of sensitive data on the grounds of religion, belief, race (includes ethnicity), political views, health (includes disability),<sup>648</sup> sexual life and concerning membership of a trade union. This prohibition further explicitly includes the collection of categories of criminal sensitive personal data and personal data concerning unlawful behaviour in relation to a previously imposed court order relating to that particular behaviour.<sup>649</sup> Data collection on the grounds of age, gender identity (which falls under the discrimination ground "gender" in Dutch equality law) or multiple grounds are not considered sensitive data nor are they covered by Article 16 PDPA but fall under the standard regime of the PDPA which allows for data collection, but only under the restrictions in Articles 6 to 15 PDPA.

Articles 17 to 23 PDPA allow for several exemptions to the general prohibition, mostly in line with the Directive. Article 18(a) PDPA, however, allows for collection of data related to race when it is absolutely necessary to process someone's racial background to identify that person and Article 18(b) PDPA whenever this is done to grant people from certain ethnical or cultural minorities a beneficial position (positive action).<sup>650</sup> These national exemptions are wider than the exemptions in the Directive. The PDPA does not include an exemption concerning employment law as mentioned in Article 8.2(b) of the Directive.

The Statistics Netherlands Act (SNA) regulates the data collection practices of Statistics Netherlands (SN), the Netherlands national statistics office.<sup>651</sup> Articles 3 and 35 SNA allow SN to collect sensitive data in the sense of Article 16 PDPA for practice, policy and research purposes and to publish the statistics compiled on the bases of such research.

The Basic Registration Population Act (BRPA) allows for the national collection of data on nationality, place of birth, gender, age and civil status of residents for the purposes of the fulfilment of governmental obligations and tasks.<sup>652</sup> It may also collect such data on non-residents, but only if there is a prior legal requirement. The BRPA is explicitly excluded from the scope of the PDPA (Article 2.2(d) PDPA).

The objective of data collection and processing according to Article 1.3 BRPA is to provide governmental bodies with data insofar as is necessary in their function and providing data for others whenever this law states it is necessary.

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<sup>647</sup> Netherlands, Personal Data Protection Act (*Wet bescherming persoonsgegevens*), 6 July 2000, [http://wetten.overheid.nl/BWBR0011468/geldigheidsdatum\\_04-01-2016](http://wetten.overheid.nl/BWBR0011468/geldigheidsdatum_04-01-2016), accessed 3 March 2016.

<sup>648</sup> DPA guidance on Article 21 PDPA, <https://autoriteitpersoonsgegevens.nl/nl/over-privacy/wetten/wbp-naslag/hoofdstuk-2-voorwaarden-voor-de-rechtmatigheid-van-de-verwerking-v-35>, accessed 3 March 2016.

<sup>649</sup> Dutch Privacy Authority (*Autoriteit Persoonsgegevens*, before 28 December 2015 known as *College Bescherming Persoonsgegevens*) in a guiding text to Article 21 PDPA, <https://autoriteitpersoonsgegevens.nl/nl/over-privacy/wetten/wbp-naslag/hoofdstuk-2-voorwaarden-voor-de-rechtmatigheid-van-de-verwerking-v-35>, accessed 3 March 2016.

<sup>650</sup> Article 18(b) sub 1,2,3 contain safeguards on this exemption, namely it should be absolutely necessary, the data relates to the birthplace of the subject, his/her parents or grandparents or other legal criteria, or when the subject has granted written permission.

<sup>651</sup> Netherlands, Statistics Netherlands Act (*Wet op het centraal bureau voor de statistiek*), 20 November 2003, <http://wetten.overheid.nl/BWBR0015926/2014-07-26>, accessed 3 March 2016.

<sup>652</sup> Netherlands, Basic Registration Population Act (*Wet basisregistratie personen*), 6 January 2014, <http://wetten.overheid.nl/BWBR0033715/2015-09-01>, accessed 3 March 2016.

| Consent | Employment | Health/life | Public | Members | Legal claim | Medicine | Public interest – Other <sup>653</sup> |
|---------|------------|-------------|--------|---------|-------------|----------|--|
| X       |            | X           | X      | X       | X           | X        | X                                      |

Another Act that explicitly demands that municipalities collect equality data is the Municipal Anti-Discrimination Facilities Act (MAFA).<sup>654</sup> It obliges municipalities to establish a local discrimination registration system and to register all discrimination complaints on all the grounds covered by Dutch civil anti-discrimination laws and the Criminal Code (CC) (Article 2.1 a and b MAFA). In practice, this is delegated to the local Anti-Discrimination Bureaus (ADB's). The grounds covered by non-discrimination law are race or ethnic origin, gender (includes gender identity),<sup>655</sup> sexual orientation, religion or belief, political conviction, nationality, pregnancy and marital status in the fields of labour, goods and services, liberal professions, membership of a union and social protection.<sup>656</sup> Age discrimination is prohibited in the fields of labour, liberal professions, membership of a union and professional education.<sup>657</sup> Discrimination on the grounds of disability or chronic illness is prohibited in the fields of labour, liberal professions, membership of a union, primary, secondary and professional education, housing and public transport.<sup>658</sup> Discrimination of women and men is prohibited at work, in professional education and in pension schemes.<sup>659</sup> The Criminal Code further prohibits discrimination in general and specifically on the grounds of race, religion or belief, gender, hetero- or homosexuality and mental or psychological disability.<sup>660</sup> Sensitive data related to all these grounds are thus collected by ADB's. Overviews of the data collected are published annually.<sup>661</sup>

The Discrimination Instruction 2007 is the national policy document requiring police and Public Prosecution Services (PPS) to register criminal discrimination and common crimes with a discriminatory aspect in their respective registration systems.<sup>662</sup> The purpose of this obligation is to ensure effective criminal prosecution and enforcement of the prohibition to discriminate in the Criminal Code (CC).<sup>663</sup> Discrimination may be reported by the victim, charges or by observation of the police constable themselves i.e. third-

<sup>653</sup> Public interest/other: sensitive data may be collected in other situations, as provided for by law, when required for reasons of substantial public interest. See Article 23.1(f) DPDA.

<sup>654</sup> Netherlands, Municipal Anti-Discrimination Facilities Act (*Wet gemeentelijke antidiscriminatievoorzieningen*), 25 June 2009, [http://wetten.overheid.nl/BWBR0026168/geldigheidsdatum\\_01-12-2015](http://wetten.overheid.nl/BWBR0026168/geldigheidsdatum_01-12-2015), accessed 3 March 2016.

<sup>655</sup> NIHR opinions: NIHR 22 May 2014, 2014-64, consideration 3.4 en College 1 July 2014, 2014-78, consideration 3.9). available at [www.mensenrechten.nl](http://www.mensenrechten.nl), accessed 3 March 2016.

<sup>656</sup> Netherlands, Dutch General Equal Treatment Act (*Algemene wet gelijke behandeling*), 2 March 1994, [http://wetten.overheid.nl/BWBR0006502/geldigheidsdatum\\_15-01-2016](http://wetten.overheid.nl/BWBR0006502/geldigheidsdatum_15-01-2016), accessed 3 March 2016.

<sup>657</sup> Netherlands, Age Discrimination Act (*Wet gelijke behandeling op grond van leeftijd*), 17 December 2003, [http://wetten.overheid.nl/BWBR0016185/geldigheidsdatum\\_15-01-2016](http://wetten.overheid.nl/BWBR0016185/geldigheidsdatum_15-01-2016), accessed 3 March 2016.

<sup>658</sup> Netherlands, Disability Discrimination Act (*Wet gelijke behandeling op grond van handicap of chronische ziekte*) of 3 April 2003, [http://wetten.overheid.nl/BWBR0014915/geldigheidsdatum\\_15-01-2016](http://wetten.overheid.nl/BWBR0014915/geldigheidsdatum_15-01-2016), accessed 3 March 2016.

<sup>659</sup> Netherlands, Equal Treatment Act (*Wet gelijke behandeling van mannen en vrouwen*), 1 March 1980, <http://wetten.overheid.nl/BWBR0003299/2015-07-01>, accessed 3 March 2016.

<sup>660</sup> Netherlands, Articles 137c-137h and 429quater Criminal Code (*Wetboek van strafrecht*), 3 March 1881. <http://wetten.overheid.nl/BWBR0001854/2016-01-01#BoekTweede>, accessed 3 March 2016.

<sup>661</sup> Dinsbach et al, *Core statistics. Overview of complaints and notifications of discrimination with the ADBs 2012-2014*, Art1, [http://www.art1.nl/artikel/10777-Forse\\_stijging\\_aantal\\_discriminatielachten](http://www.art1.nl/artikel/10777-Forse_stijging_aantal_discriminatielachten) last, accessed 25 February 2016.

<sup>662</sup> Netherlands, Discrimination Instruction (*Aanwijzing discriminatie 2007*), <http://wetten.overheid.nl/BWBR0022927/2011-10-27>, accessed 3 March 2016.

<sup>663</sup> Netherlands, Articles 137c-137h and 429quater Criminal Code, (*Wetboek van strafrecht*), 3 March 1881, <http://wetten.overheid.nl/BWBR0001854/2016-01-01#BoekTweede>, accessed 3 March 2016.



party categorisation. Data are collected on the grounds covered by the CC: race, religion or belief, hetero- or homosexual orientation and physical, psychological or mental disability.

## 2. Definitions and categories used to collect equality data

The term “race” is used in many formal laws such as Article 1 of the Dutch Constitution, the General Equal Treatment Act (GETA), Articles 137(c) to 137(g) and 429(quarter) of the Criminal Code (CC) and the PDPA. It is interpreted broadly in line with the CERD definition and includes but is not limited to skin colour, descent or “racial or ethnic background”. Reference to physical, ethnic, cultural or geographical characteristics may lead to discrimination on the grounds of race.<sup>664</sup> Categories may be specific ethnic minority groups such as Turkish, Moroccan, Surinamese, Antillean or western and non-western migrants.

The sexual orientation of a person includes sexual feelings and feelings of love, the expression of these and such relations.<sup>665</sup> It may include categories such as man, woman, homosexuality, heterosexuality, lesbian, bisexuality and other. The term “sexual life” in the PDPA includes sexual orientation.<sup>666</sup>

There is no unified definition of gender identity, but often the term “transgender people” is used which is sometimes described as the umbrella term for people who feel transgenderist, transsexual and/or transvestite or do not feel comfortable with the binary male/female. There is no specific definition of transgender, but discrimination of transgender people falls under the protection against discrimination on the ground of gender in line with CJEU case law.<sup>667</sup> This applies in both the civil equal treatment legislation and in the Criminal Code, with the exception of Article 137c and g.

Disability is not defined in the Disability Discrimination Act but in general it covers any long-term presumed physical or mental or psychological disability or chronic illness.<sup>668</sup>

Religion is defined in line with the Dutch Constitution and international conventions. Religion is not defined as such and includes both the honouring and expression of such religion. It may include any generally known or accepted religion and any actions that in light of their character and the meaning of religious regulations give expression to such a religious conviction. Categories may be Muslim, Christian, Protestant, Roman-Catholic, Netherlands-Reformed, Reformed or Jew. Belief, on the other hand, is defined as a more or less coherent system of ideas that form a fundamental doctrine about life and its principles for a group of people. Categories may be far right.

No definition of age or multiple grounds can be found in Dutch law.

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<sup>664</sup> Explanatory memorandum EC Implementation Act implementing Directives 2000/43 and 2000/78 (*MvT EG Implementatiewet*), 3 February 2003, <https://zoek.officielebekendmakingen.nl/kst-28770-3.html>, accessed 3 March 2016.

<sup>665</sup> Explanatory Memorandum to the General Equal Treatment Act (*MvT Algemene wet gelijke behandeling*), Parliament 1990-1991, 22 014 nr. 3 [http://ressourcessgd.kb.nl/SGD/19901991/PDF/SGD\\_19901991\\_0006831.pdf](http://ressourcessgd.kb.nl/SGD/19901991/PDF/SGD_19901991_0006831.pdf), accessed 12 March 2016.

<sup>666</sup> Explanatory memorandum to PDPA (*MvT Wet bescherming persoonsgegevens*), Parliament 1997-1998, 25 892, nr. 3, <https://zoek.officielebekendmakingen.nl/kst-25892-3.html>, accessed 3 March 2016.

<sup>667</sup> NIHR opinions: NIHR 22 May 2014, 2014-64, consideration 3.4 en College 1 July 2014, 2014-78, consideration 3.9). available at [www.mensenrechten.nl](http://www.mensenrechten.nl), accessed 3 March 2016.

<sup>668</sup> Netherlands, Explanatory memorandum Disability Discrimination Act (*MvT Wet gelijke behandeling op grond van handicap of chronische ziekte*) <https://zoek.officielebekendmakingen.nl/kst-28169-3.html>, accessed 3 March 2016.



### 3. Practical implementation

Statistics Netherlands (SN) collects data to draw up national statistics and for the purpose of statistical research. Methods vary considerably and may include surveys, written or online questionnaires, interviews (telephone or face-to-face), census statistics or administrative processes.<sup>669</sup> SN collects data on age, ethnic or racial background, sexual orientation, gender identity, disability and religion or belief. SN publishes annual surveys such as the Labour Force Survey (LFS) and Safety Monitor and regularly publishes reports on specific type of discrimination or assesses the inclusion of specific groups. Anonymised statistics from SN can be accessed by anyone through their website and search engine statline.cbs.nl and are often used by the Netherlands Institute for Social Research (NISR) for specific research purposes. SN statistics are further used for EU surveys. The European Statistical Data Support is officially part of SN.<sup>670</sup>

The main national surveys, the Netherlands working conditions survey (NWCS) and the LFS, collect equality data on a number of grounds. Data from both surveys are used in the EU-LFS. The NWCS is an annual national survey conducted by the SN and research institute TNO in cooperation with the national authorities, trade unions, employer organisations and trade organisations.<sup>671</sup> Since 2003, it has been collecting data on gender (man, woman) and age, and its contains a specific question on experiences with discrimination on the grounds of age, gender, skin colour, religion, sexual orientation or "other". It further contains a specific question on sexual attraction (only women, especially women, men and women equally, only men, especially men, don't know, or don't want to answer). In addition, there is a section on chronic illness (also protected by national civil anti-discrimination law).<sup>672</sup> The collected data are reported in an annual overview and made publicly available through various organisations and are added to the SN database, Statline.<sup>673</sup> The LFS has been published by SN since 1987.<sup>674</sup> Definitive data are published on a monthly, quarterly and annual basis. Data are collected on age, gender (man, woman, girl, boy), nationality (allochthonous, autochthonous), ethnic origin (proxies: father's place of birth, mother's place of birth), disability, and on the relation between religion and health.<sup>675</sup>

The NISR<sup>676</sup> is a governmental agency whose main policy and thus research areas are emancipation (i.e. equal rights and opportunities), minorities and participation in society. The NISR collects data on all discrimination grounds and in all social fields. Its annual and regular reports are widely used by government, civil servants, local authorities and academics. NISR collects equality data itself and has access to existing databases such as SN and Data Archiving and Network Services (DANS).<sup>677</sup> Methods of data collection used by the NISR are mainly (longitudinal) surveys wholly or partly funded by the NISR or surveys by SN, international surveys (European Social Survey, Eurobarometer), institutional data (hospitals or schools), data for ad hoc projects on specific subjects and

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<sup>669</sup> Methods used by SN: <http://www.cbs.nl/nl-NL/menu/methoden/gevalideerde-methoden/input-verzamelen/default.htm>, accessed 3 March 2016.

<sup>670</sup> <http://www.cbs.nl/nl-nl/onze-diensten/methoden/statistische-methoden>, accessed 12 March 2016.

<sup>671</sup> Nationale Enquete Arbeidsomstandigheden, <http://www.monitorarbeid.tno.nl/databronnen/nea>, accessed 9 April 2016.

<sup>672</sup> Questionnaire National, [http://www.monitorarbeid.tno.nl/dynamics/modules/SFIL0100/view.php?fил\\_id=148](http://www.monitorarbeid.tno.nl/dynamics/modules/SFIL0100/view.php?fил_id=148)

<sup>673</sup> Netherlands Working Conditions Survey 2014, <http://www.monitorarbeid.tno.nl/databronnen/nea>, accessed 25 February 2016.

<sup>674</sup> Enquete Beroepsbevolking (EBB), <https://www.cbs.nl/nl-nl/onze-diensten/methoden/onderzoeksomschrijvingen/korte-onderzoeksbeschrijvingen/enquete-beroepsbevolking-ebb->, accessed 9 April 2016.

<sup>675</sup> <http://www.cbs.nl/NR/rdonlyres/EB6DA71E-8DD0-4F8F-9708-842C0444675C/0/2014vragenlijstcaticapi.pdf>, accessed 9 April 2016.

<sup>676</sup> The Netherlands Institute for Social Research was established by Royal Decree of 30 March 1973. [www.NISR.nl](http://www.NISR.nl), accessed 3 March 2016.

<sup>677</sup> DANS promotes sustainable access to digital databases. Set up by the Dutch Royal Academy of Science, <http://www.dans.knaw.nl/en/about>, accessed 3 March 2016.

demographic data.<sup>678</sup> Sometimes other methods are used, e.g. discrimination testing in combination with short interviews.<sup>679</sup> Reports can be downloaded from their website [www.scp.nl](http://www.scp.nl). The NISR provides data for the European Social Survey (ESS) from the numerous databases it has developed for its reports on topics such as social position, experiences with discrimination and quality of life.<sup>680</sup> It forms part of the core scientific team of the ESS.

The MAFA requires municipalities to collect data on discrimination incidents.<sup>681</sup> In practice, this is done by the local Anti Discrimination Bureaus (ADB's). Municipalities are obliged to report annually to the Minister of the Interior on the registered types, forms and data concerning discrimination.<sup>682</sup> The purpose of such publications is to gain insight into the extent and nature of discrimination and to use them as a starting point for further policy measures/equality planning at local and national level in the Netherlands. These reports are made public. The ADB's collect sensitive personal data related to discrimination grounds covered by the GETA as well as the Criminal Code, including age, ethnic or racial origin, sexual orientation, gender identity (falls under gender), disability, religion or belief and multiple discrimination. Methods used to collect such data are ample and vary considerably by ADB, as does the registration system. Methods include self-identification, third-party categorisation (screening of newspapers and ads), notification, reporting of or complaining of discrimination by victims of discrimination or by third parties (witnesses or confidant).

The Discrimination Instruction 2007 requires the Police and Public Prosecution Services (PPS) to collect sensitive data when recording criminal discrimination or common crimes with a discriminatory aspect, in order to ensure effective investigation and prosecution of discrimination.<sup>683</sup> The police register data related to discrimination on the grounds of race, religion or belief, hetero- or homosexual orientation, physical, psychological or mental disability by means of a special code for discrimination in the registration system on the basis of incident reports, victim reports, complaints and own initiative or third-party categorisation by police officers. The PPS then recovers discrimination by means of queries (search terms) in the police incident registration system. The PPS publishes an annual report on the number of cases of criminal discrimination or common crimes with a discriminatory aspect it has handled and what the sentence was.<sup>684</sup> The collection of data is subject to the PDPA and specific police and PPS regulation on data protection.

#### 4. Key issues

In the Netherlands, an enormous amount of equality data is collected by various national and local institutions on the basis of which many reports are published on the implications, effects and experiences of discrimination for people on many grounds and in many fields. The effect and nature of various specific forms of discrimination is thus

<sup>678</sup> [http://www.scp.nl/english/Research\\_and\\_Data/Data\\_sources](http://www.scp.nl/english/Research_and_Data/Data_sources), accessed 3 March 2016.

<sup>679</sup> Andriessen et al, *Rejected on descent, research into discrimination on the The Hague labour market*, 17 June 2015, available at: [http://www.NISR.nl/Publicaties/Alle\\_publicaties/Publicaties\\_2015/Op\\_afkomst\\_afgewezen](http://www.NISR.nl/Publicaties/Alle_publicaties/Publicaties_2015/Op_afkomst_afgewezen) accessed 3 March 2016.

<sup>680</sup> [http://www.scp.nl/english/Research\\_and\\_Data/Data\\_sources](http://www.scp.nl/english/Research_and_Data/Data_sources), accessed 9 April 2016.

<sup>681</sup> Municipalities Anti-Discrimination Facilities Act, 25 June 2009, <http://wetten.overheid.nl/BWBR0026168/2009-07-28>, accessed 3 March 2016.

<sup>682</sup> Netherlands, Art 3.1 of Municipalities Anti-Discrimination Facilities Act, 25 June 2009, <http://wetten.overheid.nl/BWBR0026168/2009-07-28>, accessed 3 March 2016. Dinsbach et al, *Core statistics. Overview of complaints and notifications of discrimination with the ADBs 2012-2014*, Art1, [www.art1.nl/artikel/10777-Forse\\_stijging\\_aantal\\_discriminatieklachten](http://www.art1.nl/artikel/10777-Forse_stijging_aantal_discriminatieklachten), last accessed 3 March 2016.

<sup>683</sup> Netherlands, Discrimination Instruction (*Aanwijzing discriminatie 2007*), <http://wetten.overheid.nl/BWBR0022927/2011-10-27>, accessed 3 March 2016.

<sup>684</sup> NECD-PPS, *Cijfers in beeld overzicht discriminatiecijfers openbaar ministerie 2010 – 2014* [*Statistics in view. Overview of discrimination statistics by the Public Prosecution Services 2010-2014*], [www.tweedekamer.nl/kamerstukken/brieven\\_regering/detail?id=2015Z21652&did=2015D44060](http://www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2015Z21652&did=2015D44060), accessed 3 March 2016.

monitored extensively and policy adopted accordingly. The biggest drawback, however, is that this great variety in methods, categories and scope lacks any uniformity, which ultimately makes these data incomparable at national level and does not create any reliable account of discrimination in the Netherlands. There is also the chance that people report one and the same discrimination incident to several organisations and by various methods, such as third-party categorisation, which may result in the over-reporting of discrimination.<sup>685</sup> On the other hand, a lack of willingness to report may result in under-reporting. The current methods of equality data collection and discrimination complaints registration are mainly very useful for handling individual cases of discrimination and for regional policy purposes. For a reliable and comparable account of the state of discrimination, these data should be supplemented by information from surveys.<sup>686</sup>

Governmental policy is aimed at tackling these limitations, enhancing willingness to report, harmonising registration systems and conducting specific research into the experiences of specific vulnerable groups of people with discrimination (e.g. LGBTI people, Muslims).<sup>687</sup>

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<sup>685</sup> Netherlands, Evaluation of the MAFA (*Evaluatie Wet gemeentelijke antidiscriminatievoorzieningen*), 18 December 2012, [www.rijksoverheid.nl/documenten/rapporten/2012/12/18/evaluatie-van-de-wet-gemeentelijke-antidiscriminatievoorzieningen](http://www.rijksoverheid.nl/documenten/rapporten/2012/12/18/evaluatie-van-de-wet-gemeentelijke-antidiscriminatievoorzieningen), accessed 3 March 2016; Dinsbach W., van Bon S., *Set of guidelines for the collection, registration, processing and reporting of discrimination complaints*, Rotterdam: Art 1, 2012 <http://www.art1.nl/artikel/10523-Onderzoek-naar-registratie-discriminatieklachten-in-Duitsland-en-Nederland>, accessed 3 March 2016;

<sup>686</sup> [http://www.scp.nl/Publicaties/Alle\\_publicaties/Publicaties\\_2012/Meldingen\\_van\\_discriminatie\\_in\\_Nederland](http://www.scp.nl/Publicaties/Alle_publicaties/Publicaties_2012/Meldingen_van_discriminatie_in_Nederland), accessed 3 March 2016; Abdiessen I. & Fernee H., Reports of discrimination in the Netherlands, 19 December 2012, [http://www.scp.nl/Publicaties/Alle\\_publicaties/Publicaties\\_2012/Meldingen\\_van\\_discriminatie\\_in\\_Nederland](http://www.scp.nl/Publicaties/Alle_publicaties/Publicaties_2012/Meldingen_van_discriminatie_in_Nederland), accessed 3 March 2016.

<sup>687</sup> Netherlands government, National action plan on discrimination, 22 January 2016, <http://www.rijksoverheid.nl/documenten/rapporten/2016/01/22/nationaal-actieprogramma-tegen-discriminatie>, accessed 3 March 2016.

## 21. Poland

**Expert: Lukasz Bojarski**

### 1. Relevant legal framework<sup>688</sup>

Polish legislation, and especially antidiscrimination legislation, does not explicitly mention "equality data" or "equality data collection". There are, however, numerous pieces of legislation that refer to the obligations, frameworks or limitations for collecting equality data.

On the level of the Polish Constitution,<sup>689</sup> on the one hand, there is constitutional protection for scientific research (Article 73), but on the other hand, according to the Constitution, everyone has the right to legal protection of their private life and family life, honour and good reputation and to make decisions about their personal life.<sup>690</sup> Furthermore, no-one may be obliged, except on the basis of an Act of Parliament, to disclose personal information and public authorities may not acquire, collect or make accessible information on citizens other than that which is necessary in a democratic state ruled by law. Principles and procedures for the collection of and access to information shall be specified by statute.<sup>691</sup>

More details can be found in Article 27.1 of the Personal Data Protection Act.<sup>692</sup> The law states that the processing of "sensitive data" shall be prohibited. It does not define the term "sensitive data", but it lists the relevant data which are protected in a special manner: personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, religious, party or trade-union membership; as well as data concerning health, genetic code, addictions and sex life; and data relating to convictions, decisions on penalties and fines and other decisions issued in court or administrative proceedings. The processing of such data shall not constitute a breach of the prohibition in certain situations. Article 27 of the Personal Data Protection Act implements Article 8.1. of Directive 95/46/EC.<sup>693</sup>

| Consent | Employment | Health/life | Public | Members | Legal claim | Medicine | Public interest – Other |
|---------|------------|-------------|--------|---------|-------------|----------|-------------------------|
| X       | X          | X           | X      | X       | X           | X        |                         |

Generally there is no legal framework or strategy on collecting equality data (although relevant work has started, see point 3 below), but there are general rules regarding

<sup>688</sup> List of abbreviations

GIODO – Inspector General for Personal Data Protection (*Generalny Inspektor Ochrony Danych Osobowych*)

GUS – Central Statistical Office of Poland (CSO) (*Główny Urząd Statystyczny*)

ETA – Act of 3 December 2010 on the Implementation of Certain Provisions of the European Union in the Field of Equal Treatment

Ombud (Equality Body) – Commissioner for Civil Rights Protection (*Rzecznik Praw Obywatelskich*)

Plenipotentiary – the Government Plenipotentiary for Equal Treatment.

<sup>689</sup> The 1997 Constitution of the Republic of Poland, available at: <http://trybunal.gov.pl/en/about-the-tribunal/legal-basis/the-constitution-of-the-republic-of-poland/>.

<sup>690</sup> Article 47 of the Constitution.

<sup>691</sup> Article 51 of the Constitution.

<sup>692</sup> Poland, Act of 29 August 1997 on Personal Data Protection [amended] (*Ustawa z dnia 29 sierpnia 1997 r. o ochronie danych osobowych*).

<sup>693</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

collecting and processing statistical data and there is a general system for planning data collection by the relevant agencies, including the Central Statistical Office, which is the main agency in this respect.

The main source of legislation in this regard is the Public Statistics Act.<sup>694</sup> The law 'determines the principles and creates the basis for reliable, objective, professional and independent conducting of statistical surveys, the results of which have the character of official statistical data, and it determines the organisation and procedures of conducting those surveys as well as the scope of responsibilities related to them' (Article 1). The Act describes the procedure for deciding on what kind of data should be collected and what kind of research project should be undertaken. The GUS plans its research activities two years ahead and includes a number of stages:<sup>695</sup> the President of the GUS proposes and the Statistical Council determines annually a draft programme of statistical surveys for the next year. The draft is presented to the Council of Ministers, which every year issues a regulation on the programme for statistical surveys to determine many of the details for each survey (such as the topic, the agency or entity organising the survey, periodicity, the purpose, the subject matter and units covered by the survey, the data, the entities transmitting the data and similar).<sup>696</sup> In the process of preparing the annual programme of surveys different public entities may propose their ideas for surveys. The programme of statistical surveys for a given year is public.<sup>697</sup>

In relation to sensitive data, as described above, the Public Statistics Act includes some special provisions. Firstly, Article 8 provides, repeating the provision from the Act on Personal Data Protection, that it shall not be permitted to collect "sensitive data". Secondly, the Act provides (in the amendment of April 2015, Article 35a) that statistics services, while performing for public benefit the tasks specified in the Act, shall be entitled to process personal data within the meaning of the Act on the Protection of Personal Data. Official statistics services shall be authorised to process, for statistical purposes, the personal data listed (data shall be collected only if a statistical goal cannot be achieved by means of other data). The list includes: citizenship, nationality, ethnic origin, racial origin, religious convictions, membership of a church or religious society, marital status, medical condition, degree of incapacity to work, being in possession of a certificate of disability and degree of disability. These data may be processed as part of statistical surveys, the goal of which is to obtain information on the life and status of natural persons or on selected aspects of the life and status of those persons that are listed in the Act. It should be underlined that the above rules regulate not only the activities of the official statistical services (GUS and its local branches) but also all public institutions that collect different statistical and administrative data (see point 3 below).

An exceptional situation occurs when a national census is organised – in such a case providing information, including sensitive data, might be obligatory, but organising a census requires a special Act of Parliament as a legal basis<sup>698</sup> (the last census took place in 2011).<sup>699</sup>

Finally, despite the fact that the collection of equality data is not described separately in law, different agencies, based on numerous legal provisions (under the umbrella of the law on public statistics and law on the protection of personal data) collect some data (statistical data, administrative data) that might be relevant even if they are not collected in the context of equality issues. Different regulations regarding the police, the

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<sup>694</sup> Poland, Act of 29 June 1995 on Public Statistics [amended] (*Ustawa z dnia 29 czerwca 1995 r. o statystyce publicznej*), available in English at: <http://bip.stat.gov.pl/en/law/law-on-official-statistics/>.

<sup>695</sup> Chapter 2 of the Public Statistics Act.

<sup>696</sup> Article 18 of the Public Statistics Act.

<sup>697</sup> Programme for 2016, passed in 2015, available at: <http://bip.stat.gov.pl/dzialalnosc-statystyki-publicznej/program-badan-statystycznych/pbssp-2016/>.

<sup>698</sup> Article 9.1 of the Public Statistics Act.

<sup>699</sup> Poland, Act of 4 March 2010 concerning the national census on population and housing in 2011 (*Ustawa z dnia 4 marca 2010 r. o narodowym spisie powszechnym ludności i mieszkań w 2011 r.*).

Ministry of Justice, health services, the education system and the labour market could be mentioned (see point 3, below).

## 2. Definitions and categories used to collect equality data

There is no definition of equality data in Polish law. There are no definitions of grounds developed for the purpose of equality data collection, or anti-discrimination legislation, nonetheless definitions regarding the grounds can be found in other pieces of legislation.

The definition of an ethnic minority and the definition of a national minority (although these are criticised) are also included in the Act on National and Ethnic Minorities and Regional Languages.<sup>700</sup>

The 2008 amendment to the Act on granting protection to aliens on the territory of the Republic of Poland,<sup>701</sup> which transposed the Qualification Directive<sup>702</sup> and the Asylum Procedures Directive,<sup>703</sup> is not part of anti-discrimination legislation, but it also includes some definitions new to the Polish legal order. Article 14 of the Act includes some definitions which are useful in 'assessing the grounds of persecution' of people who apply for refugee status.

'The concept of race includes in particular colour of skin, descent, or membership of a particular ethnic group' and 'the concept of nationality is not limited to a citizenship or its absence, but shall in particular include membership of a group defined by: a) cultural, ethnic or linguistic identity or b) common geographical or political origin or c) linkage with the population of another country [...]'.<sup>704</sup>

'The concept of religion shall in particular include: a) having theistic, non-theistic or atheistic beliefs, b) participation, or refraining from participation, in religious rituals, performed in public or in private, individually or collectively, c) other acts of a religious character, beliefs expressed or forms of individual or collective behaviour as a result of religious beliefs or related to them'.

'Depending on the conditions prevailing in the country of origin, a particular social group might include a group whose members share a common sexual orientation, but sexual orientation cannot include acts which, according to Polish law, constitute crimes'.

There are several definitions of disability at national level, which relate to certain legal acts. The Act on the Vocational and Social Rehabilitation and Employment of Disabled Persons contains a legal definition of people with disabilities,<sup>704</sup> stipulating that they are people whose disability has been confirmed by a competent medical authority.<sup>705</sup> Elsewhere, disability is defined as a permanent or temporary inability to carry out social roles due to a permanent or long-term disturbance of performance of the human

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<sup>700</sup> Article 2.1., Poland, Act of on 6 January 2005 on National and Ethnic Minorities and Regional Languages (amended) (*Ustawa z 6 stycznia 2005 r. o mniejszościach narodowych i etnicznych oraz o języku regionalnym*).

<sup>701</sup> Poland, Act of 18 March 2008 on the amendment of the Act on granting protection to aliens on the territory of Poland and other Acts of Parliament, (*Ustawa z dnia 18 marca 2008 r. o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw*).

<sup>702</sup> Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

<sup>703</sup> Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

<sup>704</sup> Poland, Act of 27 August 1997 on the Vocational and Social Rehabilitation and Employment of Disabled Persons (*Ustawa z 27 sierpnia 1997 r. o rehabilitacji zawodowej i społecznej oraz zatrudnianiu osób niepełnosprawnych*).

<sup>705</sup> Article 1 Disabled Persons Act.



organism, in particular, resulting in incapacity to work.<sup>706</sup> There are three levels of disability: slight, moderate and severe.<sup>707, 708</sup>

Finally, multiple discrimination is not included and defined in the law.

### 3. Practical implementation

There is no specialised institution responsible for the collection or protection of equality data. There are only general institutions, such as the GIODO (protection of personal data) or the GUS (collection of statistical data). As a result, there is no programme for collecting equality data and there is no database that collects all relevant information and is accessible to interested parties.

However, a new development has taken place in the last couple of years that could possibly change the situation. The Government Plenipotentiary for Equal Treatment decided to task the Central Statistical Office with collecting data on discrimination.<sup>709</sup> So theoretically in the future the list of agreed indicators should be included and therefore more data on discrimination should be available. However, not much has been done so far during 2013-2015. As a result, so far there is no strategy for obtaining equality data, and the picture is rather fragmentary. Moreover, the situation is not fully clear to the state agencies, including the GUS. An example that may be useful is that the Polish police collect information on hate crime (see below). At the same time, the GUS has informed the Plenipotentiary<sup>710</sup> that since data on ethnic origin, race and faith are sensitive data, it is difficult for public statistics to be collected and it is not possible to collect information on hate crimes.

There are very limited statistics on the number of cases related to discrimination brought to justice. After the Equal Treatment Act (ETA) came into force in 2011, the Ministry of Justice declared it would collect relevant data and, as a result, the Ministry provided information for 2011 – the first year of the operation of the law. According to this information, in 2011, 30 cases were brought to district and regional courts for compensation for discrimination based on the ETA. The Ministry of Justice provides information on requests to the Ombud annually. For instance, in 2013,<sup>711</sup> 11 cases were brought to district and regional courts and one case to an appellate court for compensation for discrimination based on – together – protection of personal goods and the ETA. Despite the fact that the information is official, it must be said that it is not wholly reliable, as has been proved by research.<sup>712</sup> There are, however, more detailed statistics, collected yearly, covering court cases based on the Labour Code.<sup>713</sup> All information is collected based on statistical reporting done yearly by courts where relevant types of cases have special symbols. All data are available in the annual reports quoted, but also on the site of the Ministry of Justice with the statistical information.<sup>714</sup>

The Polish Equality Body is *Rzecznik Praw Obywatelskich* (Ombud). Polish law does not require the Ombud to collect equality data, but the ETA (by amending the Law on the Ombud) provides that the Ombud, in the implementation of the principle of equal

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<sup>706</sup> Compare Article 2.10 Disabled Persons Act.

<sup>707</sup> Article 3.1 Disabled Persons Act.

<sup>708</sup> However, under the Constitution “disability” has an independent meaning, not restricted by any decision of the medical authorities. Similarly, under the Labour Code the term is also defined independently, not restricted to the meaning contained in the Disabled Persons Act.

<sup>709</sup> Within the National Programme of Activities for Equal Treatment developed by the Plenipotentiary based on Article 21 of the ETA.

<sup>710</sup> Source: Attachment to the Letter from the President of the GUS to the Plenipotentiary, 22 January 2016.

<sup>711</sup> Ombud Annual Report 2014, p. 107.

<sup>712</sup> See: PTPA (2013), *Prawo antydyskryminacyjne w praktyce polskich sądów powszechnych. Raport z monitoringu* [Anti-discrimination law in the practice of Polish common courts. Monitoring report], Polish Society of Anti-Discrimination Law, pp.98-99; (available at: [www.ptpa.org.pl](http://www.ptpa.org.pl)).

<sup>713</sup> Ombud Annual Report 2013, p. 450-451; Ombud Annual Report 2014, p. 107.

<sup>714</sup> <https://isws.ms.gov.pl/pl/baza-statystyczna/>



treatment, should: analyse, monitor and support the equal treatment of everyone; conduct independent surveys of discrimination; prepare and publish independent reports; and issue recommendations regarding discrimination issues.<sup>715</sup> This work may obviously include collecting equality data. In addition, the Law on the Ombud gives it the direct right to process “sensitive data” as described in the Law on the Protection of Personal Data.<sup>716</sup> Since 2011, the Ombud has started commissioning some research (although mainly desk research, but also some empirical studies) and published several reports. The Ombud itself does collect equality data but only regarding complaints registered by the office, by ground of discrimination. This yearly information is published in the annual report and is available to the public. In 2014, however, due to technical problems, the Ombud only provided the overall number of complaints (this figure is also not wholly reliable). According to the reports by the Ombud as the equality body, the total number of discrimination complaints received by the Ombud’s Office in 2014 was 1,198<sup>717</sup> (in 2011 – 1,033; in 2012 – 1,960; in 2013 – 845). Despite data for 2014, complaints are divided into several categories, including prohibition of unequal treatment/discrimination based on age, religion or belief, sexual orientation, nationality, disability, race and ethnic origin, sexual identity.

In addition, the government Plenipotentiary for Equal Treatment has relevant competences. It is the body in charge of non-discrimination policies and coordination of governmental efforts in this field. Its competences include analysis, research and monitoring. The Plenipotentiary may establish special research teams, call for specific research or expert analysis and provide reports based on this research. Complaints sent to the office of the Plenipotentiary are also registered by 15 grounds of discrimination. This yearly information is published in the annual report and is available to the public.<sup>718</sup> The Plenipotentiary does not have the right to accept complaints and assist individual victims, but in fact it does receive complaints, applications and letters from victims of discrimination and NGOs. The last annual report covering 2014 mentions 377 cases.<sup>719</sup>

Surveys conducted by the GUS are the biggest source of information. The GUS conducts surveys according to the annual programme of statistical surveys,<sup>720</sup> but it also coordinates the work of other public institutions in this respect. When conducting surveys the GUS uses different methods. There is no special category of surveys regarding equality data collection, but in some surveys the information that might be relevant for equality issues is collected. All reports prepared by the GUS are available on the website.<sup>721</sup>

The GUS is responsible for national censuses, takes part in all major European surveys and is responsible for all major national surveys, both periodic and ad-hoc. The Labour Force Survey (LFS)<sup>722</sup> has been conducted every three months since 1992. Selected LFS results are published under the title ‘Quarterly information on the labour market’ and on the GUS website: <http://www.stat.gov.pl>; topic: labour; salaries. It includes information on age, disability and marital status.

The EU-SILC survey<sup>723</sup> has been conducted annually in Poland since 2005. It has a common methodology based on European regulations; it includes information on age.

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<sup>715</sup> Article 17b Act on the Commissioner for Civil Rights Protection.

<sup>716</sup> Article 17c Act on the Commissioner for Civil Rights Protection.

<sup>717</sup> Plenipotentiary Annual Report 2015, p. 3.

<sup>718</sup> Plenipotentiary Annual Report 2015, pp. 34-36; Plenipotentiary Annual Report 2014, pp. 39-40.

<sup>719</sup> Plenipotentiary Annual Report 2015, p. 34.

<sup>720</sup> See p. 1 above.

<sup>721</sup> <http://stat.gov.pl/en/basic-data/>.

<sup>722</sup> *Badanie Aktywności Ekonomicznej Ludności (BAEL)*, see: <http://stat.gov.pl/informacja-o-badaniach-ankietowych/badanie-aktywnosci-ekonomicznej-ludnosci-bael/>.

<sup>723</sup> *Europejskie badanie warunków życia ludności*, see: <http://stat.gov.pl/obszary-tematyczne/warunki-zycia/dochody-wydatki-i-warunki-zycia-ludnosci/europejskie-badanie-dochodow-i-warunkow-zycia-eu-silc-w-2013-r-,7,5.html>.

The last two national censuses took place in 2002 and 2011 and they are the largest source of representative information about the population and its characteristics. The data show, for instance, the ethnic composition of society (questions relate, for example, to citizenship, nationality, affiliation to another nation or ethnic group, country of birth and country of birth of both parents, mother tongue and language spoken at home), religion and beliefs, and numbers of persons with disabilities. Participation in the 2011 census was mandatory but some questions regarding sensitive data were still voluntary – this refers to nationality, language and national and ethnic minorities as well as religion (belonging to a church or religious organisation), disability (data from registers confirmed on a voluntary basis).

Some other surveys by the GUS, including ad hoc surveys, or thematic reports based on other large surveys include:

- People with disabilities on the labour market in 2011;<sup>724</sup>
- People aged 50+ on the labour market in 2011;<sup>725</sup>
- Time budgeting by the population,<sup>726</sup> conducted every 10 years, provides information on free time spent by people aged 60+, on their voluntary engagement and help for others;
- Adult education in 2011<sup>727</sup> provides information on education by age;
- National and ethnic minority civil society organisations<sup>728</sup> is a periodic survey, but last time it also included data on discrimination. Out of 133 associations that took part in the research, 24 (18%) declared that they were approached by people alleging they had been treated unequally because of their nationality or ethnic origin;
- Education and upbringing reports<sup>729</sup> include, for instance, information on teaching the languages of national minorities.

The European Social Survey (ESS) has been conducted since 2002, Poland has taken part in all seven editions, every two years. In Poland the project is conducted by the Polish Academy of Sciences (Institute of Philosophy and Sociology).<sup>730</sup> The methodology is common for all countries taking part in the survey.

The National Labour Inspectorate (*Państwowa Inspekcja Pracy*)<sup>731</sup> collects data on complaints, including complaints regarding discrimination by employers. In 2015 there were 585 complaints (containing 716 problems with discrimination). Complaints are broken down by fields (corresponding to articles of the Labour Code) and grounds of discrimination, including: age; disability; race, ethnic origin and nationality; faith and religion; and sexual orientation.<sup>732</sup>

The police<sup>733</sup> collect statistical data on hate crimes (via their Electronic Register of Actions and Police Electronic Reporting System).<sup>734</sup> Data are broken down according to

<sup>724</sup> *Osoby niepełnosprawne na rynku pracy*, see:

[http://stat.gov.pl/cps/rde/xbcr/gus/pw\\_osoby\\_niepelnosprawne\\_na\\_ryнку\\_pracy\\_w\\_2011.pdf](http://stat.gov.pl/cps/rde/xbcr/gus/pw_osoby_niepelnosprawne_na_ryнку_pracy_w_2011.pdf).

<sup>725</sup> *Osoby powyżej 50. Roku życia na rynku pracy*, see:

[http://stat.gov.pl/cps/rde/xbcr/gus/PW\\_osoby\\_pow\\_50\\_roku\\_zycia\\_na\\_ryнку\\_pracy\\_2011.pdf](http://stat.gov.pl/cps/rde/xbcr/gus/PW_osoby_pow_50_roku_zycia_na_ryнку_pracy_2011.pdf).

<sup>726</sup> *Budżet czasu ludności*, see: <http://stat.gov.pl/obszary-tematyczne/warunki-zycia/dochody-wydatki-i-warunki-zycia-ludnosci/budzet-czasu-ludnosci-w-2013-r-,19,1.html>.

<sup>727</sup> *Kształcenie dorosłych*, see: <http://stat.gov.pl/obszary-tematyczne/edukacja/edukacja/ksztalcenie-doroslych-2011-w-podziale-na-wojewodztwa-,9,1.html>.

<sup>728</sup> *Stowarzyszenia narodowościowe i etniczne*, see: <http://stat.gov.pl/obszary-tematyczne/inne-opracowania/wyznania-religijne/>.

<sup>729</sup> *Oświata i wychowanie*, see: <http://stat.gov.pl/obszary-tematyczne/edukacja/edukacja/oswiata-i-wychowanie-w-roku-szkolnym-20142015,1,9.html>

<sup>730</sup> <http://www.ifispan.waw.pl/badania/ess/>.

<sup>731</sup> <http://www.pip.gov.pl/en>.

<sup>732</sup> Source: Letter from the Chief Labour Inspector to the Ombud, 9 February 2016.

<sup>733</sup> <http://www.policja.pl/pol/english-version/4889,Polish-National-Police.html>.

particular crimes as described in the Penal Code. This includes hate crimes based on race, ethnicity, nationality, xenophobia, faith (lack of faith) and religion. Since 2013 the police have also collected qualitative data on hate crime issues from local coordinators (regional coordinators combating crimes based on racial hatred and xenophobia). It collects and analyses information about the scale of the phenomenon and methods of operation of perpetrators. The objective of data collection on hate crimes is to identify their scale and trends in order to better counteract these types of crimes.<sup>735</sup> The Polish police have a special website with statistical information.<sup>736</sup> It only includes selected statistics, for instance: crimes committed by juveniles, crimes committed by foreigners. It also includes statistics based on the Penal Code, for instance: crimes against freedom of faith,<sup>737</sup> hate speech<sup>738</sup> and similar. In addition, starting in January 2016, it will be possible to collect and generate statistical information on crime victims, including information on their sex, age (year of birth), nationality and citizenship.<sup>739</sup>

The Supreme Audit Office (*Naczelna Izba Kontroli*, NIK)<sup>740</sup> is the top independent state audit body whose mission is to safeguard public spending. The NIK performs numerous audits annually in the form of surveys that also contain data (both qualitative and statistical). The results of the audits are published on the NIK website. Examples of audits relevant to equality published in 2015 include:<sup>741</sup> public services for sign language users<sup>742</sup>; the use by the local district government of the funds of the State Fund for the Rehabilitation of Disabled Persons;<sup>743</sup> undertaking and execution by the public administration of tasks relating to the rights and needs of the Roma minority in Poland.<sup>744</sup>

The least information and data are available for the LGBTQ population. There are no public statistics available, it is not covered by the National Census. Some information is collected by NGOs (Lambda, Campaign Against Homophobia) in their research. But this is not representative or of a qualitative character. It is only occasionally that specific information may be collected.<sup>745, 746</sup>

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<sup>734</sup> *Elektroniczny Rejestr Czynności Dochodzeniowo-Śledczych and System Elektronicznej Sprawozdawczości Policji*.

<sup>735</sup> Source: Letter from the Plenipotentiary for Human Rights Protection on issues of the Police Commander in Chief to the Ombud, 20 January 2016.

<sup>736</sup> <http://statystyka.policja.pl>.

<sup>737</sup> <http://statystyka.policja.pl/st/kodeks-karny/przestepstwa-przeciwko-5>.

<sup>738</sup> <http://statystyka.policja.pl/st/kodeks-karny/przestepstwa-przeciwko-13/63613,Publiczne-propagowanie-faszyzmu-nawolywanie-do-nienawisci-art-256.html>.

<sup>739</sup> Source: Letter from the Ministry of the Interior to the Plenipotentiary, 11 December 2015.

<sup>740</sup> [www.nik.gov.pl/en/](http://www.nik.gov.pl/en/).

<sup>741</sup> Source: Letter from the NIK President to the Ombud, 8 February 2016.

<sup>742</sup> *Świadczenie usług publicznych osobom posługującym się językiem migowym* (P/14/105).

<sup>743</sup> *Wykorzystanie przez samorządy powiatowe środków Państwowego Funduszu Rehabilitacji Osób Niepełnosprawnych* (P/14/047).

<sup>744</sup> *Podejmowanie i wykonywanie przez administrację publiczną zadań na rzecz praw i potrzeb mniejszości romskiej w Polsce* (P/14/119).

<sup>745</sup> *Zapytanie nr 5487 do ministra sprawiedliwości w sprawie udostępnienia informacji o liczbie orzeczeń sądów okręgowych na terenie Polski rozpoznawanych na podstawie art. 189 K.p.c., dotyczących zmiany oznaczenia płci wpisanej do aktu urodzenia* [Question No. 5487 to the Minister of Justice on providing with information on the number of judgments of regional courts in Poland decided on the basis of Art. 189 CPC relating to renaming of the gender entered on the birth certificate], see: <http://www.sejm.gov.pl/Sejm7.nsf/InterpelacjaTresc.xsp?key=5B0C2481>.

<sup>746</sup> *Odpowiedź podsekretarza stanu w Ministerstwie Sprawiedliwości - z upoważnienia ministra - na zapytanie nr 5487 (1)* [Answer from the Undersecretary of State of the Ministry of Justice - under the authority of the minister - to request No. 5487], see:

[www.sejm.gov.pl/Sejm7.nsf/InterpelacjaTresc.xsp?key=5804023C](http://www.sejm.gov.pl/Sejm7.nsf/InterpelacjaTresc.xsp?key=5804023C). *Odpowiedź podsekretarza stanu w Ministerstwie Sprawiedliwości - z upoważnienia ministra - na zapytanie nr 5487 (2)* [Answer of the Undersecretary of State of the Ministry of Justice - under the authority of the minister - to request No. 5487], see: [www.sejm.gov.pl/Sejm7.nsf/InterpelacjaTresc.xsp?key=1BF0613D](http://www.sejm.gov.pl/Sejm7.nsf/InterpelacjaTresc.xsp?key=1BF0613D).

#### **4. Key issues**

- There has never been a strategic approach to the collection of equality data and the subject is still quite new (the equality body has been designated only since 2011). However, in recent years an interesting process has begun regarding the collaboration between the offices of the Government Plenipotentiary for Equal Treatment and the Central Statistical Office (as an element of the execution of the National Programme of Activities for Equal Treatment). It is too early to judge whether it will be successful (the first real effects of this collaboration may be finalised during 2017) but the exchange of opinions and expectations has started and there are plans to organise meetings of a working group that would determine what kind of equality data should be collected by the GUS.
- Since the enactment of the ETA there has been a discussion on the need to collect information on court cases regarding discrimination. The full information is still missing and what is available is controversial and not fully reliable (especially discrimination outside employment).

## 22. Portugal

**Expert: Rosário Mauritti**

### 1. Relevant legal framework

The Constitution of the Portuguese Republic (CRP)<sup>747</sup> forbids the processing of sensitive data 'concerning philosophical or political convictions, party or trade union affiliations, religious faith, private life or ethnic origins, save with the express consent of the data subject, or with an authorisation provided for by law, and with guarantees of non-discrimination, or for the purpose of processing statistical data that are not individually identifiable' (Article 35, para. 3). The same article also determines that, 'Third-party access to personal data is prohibited, save in exceptional cases' (Article 35, para. 4), and prohibits 'The allocation of a single national number to any citizen' (Article 35, para. 5).

The Portuguese Personal Data Protection Law (DPL) (Law 67/98, of 26 October)<sup>748</sup> is based on the principles established by the CRP article referred to above and transposes Directive 95/46/EC<sup>749</sup> into the Portuguese legal system. Regarding sensitive data, the processing of which is, in principle, forbidden, the DPL establishes that: 'The treatment of data concerning philosophical or political beliefs, party or union membership, religious faith, private life and racial or ethnic origin is forbidden, as well as the treatment of data relative to health and sexual life, including genetic data' (Article 7, para. 1).<sup>750</sup> This rule shall not apply when, 'on important public interest grounds, such processing is essential to exercise the legal or statutory rights of the controller, or when the data subject has given his/her explicit consent for such processing, in both cases with guarantees of non-discrimination and with the security measures provided for in Article 15' (DPL, Article 7, para. 2).

According to Article 7, para. 3 of the DPL, 'The processing of the data referred to in para. 1 shall also not apply where: (a) it is necessary to protect the vital interests of the data subject, or of another person where the data subject is physically or legally incapable of giving his/her consent; (b) when it is carried out, with the data subject's consent, in the course of its legitimate activities by a foundation, association or any other non-profit seeking body with a political, philosophical, religious or trade union aim, and on condition that the processing relates solely to the members of the body or to persons who have regular contact with it in connection with its aims, and that the data are not disclosed to a third party without the consent of the data subjects; (c) when it relates to data which are manifestly made public by the data subject, provided his/her consent for their processing can be clearly inferred from his/her declarations; (d) when it is necessary for the establishment, exercise or defence of legal claims and is exclusively carried out for that purpose'.

Furthermore, paragraph 4 of Article 7 specifies that, 'The processing of data relating to health and sex life, including genetic data, shall be permitted if it is necessary for the purposes of preventive medicine, medical diagnosis, the provision of care or treatment or the management of healthcare services, and where those data are processed by a health professional subject to professional secrecy or by another person also subject to an equivalent obligation of secrecy'.

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<sup>747</sup> Portugal, Constitution of the Portuguese Republic (*Constituição da República Portuguesa*). Available at: [www.en.parlamento.pt/Legislation/CRP/Constitution7th.pdf](http://www.en.parlamento.pt/Legislation/CRP/Constitution7th.pdf).

<sup>748</sup> Portugal, Law No 67/98 of 26 October, Personal Data Protection Law. Available at: [www.cnpd.pt/english/bin/legislation/Law6798EN.HTM](http://www.cnpd.pt/english/bin/legislation/Law6798EN.HTM).

<sup>749</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, published in Official Journal L 281, 23/11/1995 P. 0031 – 0050.

<sup>750</sup> Portugal, Law No 67/98 of 26 October, Personal Data Protection Law (DPL), original Portuguese version published in *Diário da República* (Official Gazette) - 1st Serie-A, no.247 - October 26, 1998.

Moreover, Article 8, para. 2 of the DPL<sup>751</sup> determines that the processing of data related to persons suspected of illegal activities, criminal and administrative offences and decisions applying penalties, security measures, fines and additional penalties may be authorised by the National Supervisory Authority for Personal Data Processing (*Comissão Nacional de Protecção de Dados – CNPD*), subject to observance of the rules for the protection of data and the security of information, when such processing is necessary to pursue the legitimate purposes of the controller, provided the fundamental rights and freedoms of the data subject are not overriding.

Article 6 of the DPL<sup>752</sup> adds to this list exceptions related to: 'a) performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract or a declaration of his/her will to negotiate' (Article 6a); 'b) for compliance with a legal obligation to which the controller is subject' (Article 6b).

The CNPD<sup>753</sup> is responsible for authorising or registering the treatment and transfer of personal data which is not subject to a specific legal provision and, in general, assuring compliance with the provisions established in the Personal Data Protection Law.

Legal provisions of relevance for the collection of equality data are included in the framework legislation on official statistics, Law 22/2008, of 13 May (SEN Law).<sup>754</sup> Pursuant to Article 18 of the SEN Law, 'Within its fields of competence and to carry out tasks in the public interest, Statistics Portugal (*Instituto Nacional de Estatística – INE*) may treat personal data, including sensitive data, and interconnect them, namely with other statistical authorities.<sup>755</sup> To achieve this purpose, INE shall be empowered namely to: (a) Determine which kind of data treatment is necessary; (b) Promote, where necessary, gender-based disaggregated treatment of personal data (c) Develop a specific register that includes treatment purposes, categories of data subjects and personal data treated, addressees or categories of addressees to whom data may be reported and under what conditions the possible data transfer to third countries may take place; (d) Interconnect personal data, when necessary to produce official statistics; (e) Disclose the manner in which data subjects may access, correct or eliminate data related to them; (f) Authorise the transfer of confidential data to European Union Member States, within the scope of the production of European statistics; (g) Destroy personal data used to prepare statistics, under special security measures'.

| Consent | Employment | Health/life | Public | Members | Legal claim | Medicine | Public interest – Other |
|---------|------------|-------------|--------|---------|-------------|----------|-------------------------|
| X       | X          | X           | X      | X       | X           | X        | X                       |

<sup>751</sup> Concerning suspicion of illegal activities, criminal and administrative offences.

<sup>752</sup> Setting the criteria for making data processing legitimate.

<sup>753</sup> DPL (Art. 21 and following). Nevertheless, the Law on the organisation and operation of the CNPD was only approved in Law 43/2004 of 24 August, see: [www.cnpd.pt/bin/cnpd/Lei\\_43\\_2004.pdf](http://www.cnpd.pt/bin/cnpd/Lei_43_2004.pdf).

<sup>754</sup> Portugal, Law 22/2008 on Official Statistics. Published in Diário da República (Official Gazette) no.92/2008, 1st Series of May 13, 2008. Available at: [https://ine.pt/xportal/xmain?xpid=INE&xpgid=ine\\_cont\\_inst&INST=53870&ine\\_smenu.boui=13918434&ine\\_smenu.selected=13918884&lang=en](https://ine.pt/xportal/xmain?xpid=INE&xpgid=ine_cont_inst&INST=53870&ine_smenu.boui=13918434&ine_smenu.selected=13918884&lang=en).

<sup>755</sup> Interconnecting: according to the DPL, At.3 (i): a form of processing which consists of the possibility of correlating different data bases kept by other controllers or kept by the same controller for other purposes. In addition, according to Art. 18 of the SEN Law, this interconnection of sensitive data by the INE must safeguard the provisions of Art. 9, para. 2 of Law No 67/98 of 26 October: 'must not involve discrimination or a reduction of the data subject's freedom and fundamental rights, and must be covered by adequate security measures, as well as taking into account the type of data subject to combination'.



In addition to these general regulatory frameworks for the processing, treatment and transfer of sensitive data, over the last few years Portugal has produced some legal provisions of importance for the collection of data which might be relevant for equality policies. In the area of gender equality, particular note should be made of Law 10/2001 of 21 May, which institutes a mandatory annual report on equal opportunities between men and women.<sup>756</sup> Along the same lines, in the area of race and ethnicity, Law 134/99, of 28 August (Anti-discrimination Law), Article 5, creates a Commission for Equality and Against Racial Discrimination (*Comissão para a Igualdade e Contra a Discriminação Racial* – CICDR) and institutes the requirement to collect information relative to the practice of discriminatory acts; stipulating the mandatory obligation of the preparation and publishing of an annual report on the situation of equality and racial discrimination in Portugal.<sup>757</sup> On this same issue (race and ethnicity), Council of Ministers Resolution 74<sup>758</sup> promotes the improvement of the official data records on immigrants, existing in various ministries, broken down by gender.<sup>759</sup> Finally, in this area, Decree-Law 31/2014, of 27 February, empowers the High Commissioner for Migration (*Alto Comissariado para as Migrações* – ACM) to, 'Contribute to the improvement of the collection and disclosure of official statistical data on migratory flows, through consolidation of the collection of data or supplementary information which is not directly accessible in primary sources'.<sup>760</sup>

## 2. Definitions and categories used to collect equality data

As noted above, the Constitutional Law forbids the questioning and recording by third parties of information on "race" or "ethnic origin", except in the situations defined by specific laws. However, the surveys conducted by both the INE (Statistics Portugal) and other bodies of the national statistics system facilitate approximations being made of these data, principally through the concepts of "immigrant" and "foreign citizen". Thus, the proxies for race/ethnic origin used by different bodies in Portugal include nationality and country of birth and, less frequently, national origin or background (nationality of parents or grandparents). The studies targeting children and young people of school age also ask questions about the mother tongue or the language predominantly spoken in the family.<sup>761</sup> Occasionally, data can also be found on the adult population through observation, with identification of race/ethnicity based on third-party categorisation.<sup>762</sup> The only example of systematic data which includes distinctive data on "nationality" and "race/ethnicity" derives from self-identification, forming part of discrimination complaints recorded by the CICDR.<sup>763</sup>

On the topic of sexual orientation and gender identity, the official data are extremely scarce, as this problematic area is not addressed in the surveys produced by the INE. The categories of people who can be classified in terms of minority gender groups are not addressed in the overall studies, which only include questions about gender groups which can be classified as female or male (with the respective classification being conducted by third-party categorisation or auto-hetero identification). Outside this context, some broadening of concepts for analysis of discrimination processes based on gender and sexual orientation is found in specialised studies sponsored by the Commission for Citizenship and Gender Equality (*Comissão para a Cidadania e a Igualdade de Género* – CIG). Issues concerning gender violence are underpinned by data

<sup>756</sup> Annual reports produced by the Commission for the Equality of Labour and at Work (CITE), available at: [www.cite.gov.pt/pt/acite/publicacoes\\_02.html](http://www.cite.gov.pt/pt/acite/publicacoes_02.html).

<sup>757</sup> [www.cicdr.pt/-/relatorio-de-atividades](http://www.cicdr.pt/-/relatorio-de-atividades).

<sup>758</sup> Published in *Diário da República*, 1st series, number 182, on 17 September 2010.

<sup>759</sup> <https://dre.pt/application/dir/pdf1sdip/2010/09/18200/0409704116.pdf>.

<sup>760</sup> <https://dre.pt/application/dir/pdf1sdip/2014/02/04100/0165601660.pdf>.

<sup>761</sup> Information at this level is derived from the records of students who attend the curricular offer of "non-mother tongue Portuguese" (PLNM), available at: [www.dge.mec.pt/portugues-lingua-nao-materna#estds](http://www.dge.mec.pt/portugues-lingua-nao-materna#estds).

<sup>762</sup> E.g. Mendes, M. et al. (2014) *Estudo Nacional Sobre as Comunidades Ciganas* [National Study of Roma communities], Observatório das Comunidades Ciganas: [www.potfse.qren.pt/upload/docs/Documentos/estudo\\_ennic.pdf](http://www.potfse.qren.pt/upload/docs/Documentos/estudo_ennic.pdf).

<sup>763</sup> See: [www.cicdr.pt/](http://www.cicdr.pt/).



on complaints of violence produced by the Lesbian, Gay, Bisexual and Transgender Intervention Association (*Intervenção Lésbica, Gay, Bissexual e Transgénero - ILGA*), relating to people with diverse identities (by self-identification).<sup>764</sup>

Although access to data on religion is framed in prohibitive laws,<sup>765</sup> in the recent statistical process of census data collection (Census 2011), a specific law was created which permitted a question on religion.<sup>766</sup> Due to its nature, this question was phrased as an optional, self-identification question.<sup>767</sup>

The available data on disability is dependent on the concepts of “work limitations”, “social support beneficiaries” and “carers”<sup>768</sup> and, in the population census, “degree of difficulty experienced by the person” (self-assessment),<sup>769</sup> and administrative records of different ministries on “persons with incapacity” (third-party categorisation).

### 3. Practical implementation

The main sources of equality data in Portugal are sample surveys promoted by Statistics Portugal (INE) in coordination with Eurostat, namely the Labour Force Survey (LFS), published on a quarterly basis;<sup>770</sup> Household Budget Surveys (HBS), every five years;<sup>771</sup> and the Statistics on Income and Living Conditions (EU-SILC), data collection annually.<sup>772</sup> All these surveys collect data on age, ethnic/racial origin (nationality, place of birth) and disability. In addition, under the LFS, the INE has implemented ad hoc modules (on an irregular basis) related to some of the characteristics included in this research: on race and ethnicity: ‘Labour market situation of migrants and their immediate descendants’ (published in 2009 and 2015);<sup>773</sup> on age: ‘Transition from work into retirement’ (2007 and 2013), ‘Entry of young people into the labour market’ (2010); on health problems /disability: ‘Work-related accidents, health problems and hazardous exposure’ (2008), ‘Employment of disabled people’ (2012) and ‘Accidents at work and other work-related health problems’ (2014). The Population and Housing Census<sup>774</sup> is conducted by INE once every 10 years and provides general demographic data on the same characteristics indicated above and also information on religion.

Portugal has participated in all waves of the European Social Survey (ESS), small sample survey; every two years since 2002,<sup>775</sup> cross-national studies on values and attitudes. ESS is the only source that provides direct information on race and ethnic origin, namely data concerning self-perception of ‘Belonging to a minority ethnic group’; and perceived discrimination based on colour/race; nationality, language and ethnic group. Response options to this question also include the self-perception of discrimination for reasons of sexuality; gender; age; religion; and disability. The ESS main questionnaire (all rounds)

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<sup>764</sup> See: <http://ilga-portugal.pt/areas-trabalho/areas-trabalho.php>.

<sup>765</sup> CRP, Article 35; Law 67/98, of 26 October (Protection of personal data) as well as Law 16/2001, of 22 June (Law on Religious Freedom).

<sup>766</sup> Decree-Law 226/2009 of 14 September, Article 5, see:

[www.pgdlisboa.pt/leis/lei\\_mostra\\_articulado.php?nid=806&tabela=leis&so\\_miolo=](http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=806&tabela=leis&so_miolo=).

<sup>767</sup> The religion variables proposed in the 2011 census covered the Catholic, Orthodox, Protestant, Other Christian, Jewish, Muslim, Other non-Christian religions and No religion.

<sup>768</sup> ‘Employment of disabled people’ – 2011 Labour Force Survey ad hoc module; ‘National Health Survey’ (under EC Regulation 141/2013 of 19 February 2013). Several documents are available from the Disability and Human Right Observatory, at: <http://oddh.iscsp.utl.pt/index.php/pt/sobre-o-oddh/objetivos>.

<sup>769</sup> For the 2011 Census, the observation for this variable adopted the general framework of questions proposed by the Washington Group on disability statistics.

<sup>770</sup> *Inquérito ao Emprego (IE)*.

<sup>771</sup> *Inquérito aos Orçamentos Familiares (IOF/IDEF)*.

<sup>772</sup> *Inquérito às Condições de Vida e Rendimento - ICOR (SILC)*.

<sup>773</sup> Immediate descendants concept: immigrant background of the individual and / or their parents.

<sup>774</sup> *Recenseamento Geral da População (Censos)*, decennial collection since 1890. A sub-sample of micro-data with 5% of the database, representative of the total, is available for research purposes.

<sup>775</sup> National sample: multi-stage sample design, using Random Route Techniques.

also includes indicators on religion.<sup>776</sup> In addition to the core questionnaire, the ESS implements rotating modules on specific themes. The ESS1 (2002) module focused on immigration and asylum. Some items from this round were repeated in ESS7 (2014),<sup>777</sup> alongside some new items designed to strengthen the measurement of symbolic threat.<sup>778</sup> The ESS4 module on ageism (2008) provided comprehensive data on ageing-related perceptions, relationships and stereotypes and prejudices.<sup>779</sup>

In the area of race/ethnicity, the current legal and institutional mechanisms which seek to institute in Portugal a policy of organised integration to comply with the standards contained in the international requirements and recommendations on the matter of immigrant integration have led to a multiplication of the data sources. The monitoring of the effects of this framework have been supported, in the sphere of official statistics, both by regular surveys, referred to above, and by the growing integration and coordination of administrative registration data.<sup>780</sup> In addition to these sources, we also find other studies, developed in coordination with the ACM under the Migration Observatory, which follow simultaneously qualitative and quantitative research methodologies, based on:

1. Interviews (individual and focus group) with immigrants;
2. Exploratory questionnaires for immigrants according to the specific topic of the study;
3. Documentary analyses (e.g. written, press, legislation);
4. Analysis of the main statistical sources available;
5. Direct observation in the field.<sup>781</sup>

Broadly speaking, the major national official surveys do not collect data on sexual orientation, gender identity and multiple grounds. However, at the CIG it is possible to locate some studies produced by NGOs and researchers on this, both qualitative and quantitative.<sup>782</sup> In the collection of primary data by official bodies, the main exceptions with regard to regulatory approaches based on a binary sex model are found in records of data on sexual orientation relative to the number of same-sex marriages (Ministry of Justice),<sup>783</sup> and the records involving people (including deceased) diagnosed with sexually transmitted diseases (Ministry of Health).<sup>784</sup> Official data on gender identity refer to the number of gender reassignment operations carried out in Portugal, and requests for gender reassignment in the records (Ministry of Justice).<sup>785</sup> There is little data on sexual orientation, only the ILGA Association provides some data on the issue of violence against LGBT people through complaints made to the association, as well as data on health. On the sub-topic of gender identity, academic research constitutes a richer source for a characterisation of the diversity and complexity of issues of integration and equality in these sectors.<sup>786</sup>

<sup>776</sup> 'Belonging to any particular religion or denomination' (Catholic; Jewish; Muslim; Protestant; Hindu; Other Eastern Religion; Other Non-Christian Religion).

<sup>777</sup> Portuguese data concerning round 7 (2014) will be available from May 2016.

<sup>778</sup> [www.europeansocialsurvey.org/data/themes.html?t=immigration](http://www.europeansocialsurvey.org/data/themes.html?t=immigration).

<sup>779</sup> [www.europeansocialsurvey.org/data/themes.html?t=ageism](http://www.europeansocialsurvey.org/data/themes.html?t=ageism).

<sup>780</sup> An example of these dynamics of provision of official statistics is the SEFSTAT portal, with data relating to the migrant population, exclusively from an Integrated Information System of the Aliens and Borders Service (SEF/MAI): <http://sefstat.sef.pt/relatorios.aspx>

<sup>781</sup> Migration Observatory, Publications: [www.om.acm.gov.pt/publicacoes-om/colecao-estudos](http://www.om.acm.gov.pt/publicacoes-om/colecao-estudos).

<sup>782</sup> [www.cig.gov.pt/siic/](http://www.cig.gov.pt/siic/).

<sup>783</sup> Data published in the press, available at: [www.dn.pt/portugal/interior/quase-casamentos-do-mesmo-sexo-nos-ultimos-cinco-anos-4606834.html](http://www.dn.pt/portugal/interior/quase-casamentos-do-mesmo-sexo-nos-ultimos-cinco-anos-4606834.html).

<sup>784</sup> Focus on health priority programme. Concept: HIV infection \* 'Men who have sex with men' (annual report since 2013), available at: [www.pnvihsida.dgs.pt/estudos-e-estatisticas111111/relatorios1.aspx](http://www.pnvihsida.dgs.pt/estudos-e-estatisticas111111/relatorios1.aspx).

<sup>785</sup> Data published in the press, available at: [www.publico.pt/sociedade/noticia/quase-300-pessoas-mudaram-de-sexo-no-registo-civil-1721122](http://www.publico.pt/sociedade/noticia/quase-300-pessoas-mudaram-de-sexo-no-registo-civil-1721122).

<sup>786</sup> Cf. Saleiro S. (2013), *Trans géneros: uma abordagem sociológica da diversidade de género* [Trans gender: A sociological approach to gender diversity], PhD Thesis, available at: [https://issuu.com/amplos/docs/tese\\_trans\\_sandraaleiro](https://issuu.com/amplos/docs/tese_trans_sandraaleiro). This research analyses data from an online

Concerning religion, the Census and the national survey, 'Religious Identities in Portugal: representations, values and practices', conducted by Universidade Católica, in 2011, are the main sources.<sup>787</sup> Up to the 1981 Census, the question on religion only covered the options of Catholic, Other religions and No religion. Since 1981 the questions have covered the main religious beliefs: Catholic, Orthodox, Protestant, Other Christian, Jewish, Muslim, Other non-Christian religions and No religion.

The available data on disability are collected either by sample survey,<sup>788</sup> population census or the administrative records of different ministries. In this specific area of monitoring equality among the disabled population, Portugal is still testing different forms of integration of the different records, therefore, with the exception of some approaches which ascribe the concept to health and education, access to administrative data on integration and access to work for disabled citizens is still hindered.

#### 4. Key issues

Regarding the monitoring of equality in the various areas under review, despite the limitations imposed by the law, there has been a notable improvement in the processing, control and transfer of official data, in a process coordinated centrally by the INE.<sup>789</sup> Access to this information in anonymised micro-databases for research purposes has been an instituted practice in Portugal since 1999.<sup>790</sup>

Nevertheless, the official statistics enable the study (albeit lacking in substantive information and qualitative depth) of relevant areas: for race/ethnicity the proxy approaches only partially reveal discriminatory processes due, for example, to skin colour.<sup>791</sup> Furthermore, official information on the descendants of migrants and conditions of access to and integration into the labour market is non-existent.<sup>792</sup>

Concerning the LGBT population, the reference variables are limited to questions on gender, operationalised in a dichotomous manner. The available official data on different gender identities are almost non-existent, not allowing for an overview of the existing diversity of expressions and respective experiences of inclusion and social participation. These issues of data gaps are partially covered by civic mechanisms: CICDR, online claims, linked to the High Commissioner for Migration (ACM);<sup>793</sup> and ILGA, Discrimination Observatory.<sup>794</sup> These are two channels where citizens can find an anonymous and swift

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questionnaire conducted among transgender people; in-depth interviews and observation in contexts frequented by people with diverse identities.

<sup>787</sup> Summary of the study: [www.esb.ucp.pt/sites/default/files/images/inquerito\\_2011\\_resumo.pdf](http://www.esb.ucp.pt/sites/default/files/images/inquerito_2011_resumo.pdf).

<sup>788</sup> 'Employment of disabled people' – 2011 Labour Force Survey (ad hoc module); 'National Health Survey' (five-year collection, under EC Regulation 141/2013 of 19 February 2013), 'Survey of Living Conditions and Income – ICOR', EU-SILC (annual survey).

<sup>789</sup> <http://smi.ine.pt/?LANG=EN>.

<sup>790</sup> Year of the first 'Protocol for Access to Databases for purposes of Scientific Research', between the Ministry of Science and INE, and updated in 2014:

[www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine\\_cont\\_inst&INST=387114&xlang=pt](http://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_cont_inst&INST=387114&xlang=pt).

<sup>791</sup> Occasionally, public servants are responsible for racist incidents, suggesting a cultural attitude of relative complacency: E.g. [www.bbc.com/news/magazine-32419952](http://www.bbc.com/news/magazine-32419952), where these events were condemned by the ACM through a notice available at: [www.cicdr.pt/documents/57891/98773/Comunicado\\_bairro\\_cova\\_moura.pdf/bd1fd193-32f2-4eb1-8f05-51fe5c608dbc](http://www.cicdr.pt/documents/57891/98773/Comunicado_bairro_cova_moura.pdf/bd1fd193-32f2-4eb1-8f05-51fe5c608dbc).

<sup>792</sup> Although it is hoped that this may be remedied with the publication of the data from the ad-hoc module of the Employment Survey 2014: 'Migrants and their descendants in the labour market'.

<sup>793</sup> Commission for equality and against racial discrimination/Online Claims of illegal facts constituting discriminatory practice(s) motivated by skin colour, nationality or ethnic origin, available at: [www.cicdr.pt/queixa](http://www.cicdr.pt/queixa).

<sup>794</sup> ILGA-Observatory of Discrimination due to Sexual Orientation and Gender Identity: <http://ilga-portugal.pt/observatorio/>.

route to submit complaints relating to experiences of discrimination, and whose records are publicised in an anonymised form in reports produced annually.<sup>795</sup>

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<sup>795</sup> Migration in numbers collection: aggregates official data from a survey of administrative record sources and data collected by the CICDR [www.om.acm.gov.pt/publicacoes-om/colecao-imigracao-em-numeros](http://www.om.acm.gov.pt/publicacoes-om/colecao-imigracao-em-numeros); ILGA-Portugal, Publications: <http://ilga-portugal.pt/actividades/publicacoes.php>.

## 23. Romania

**Expert: Romanița Iordache**

### 1. Relevant legal framework

There is no specific legal provision on equality data collection in Romania and no methodologies have been identified, as the legislation does not currently include an obligation to collect equality data. Legal provisions of significance for data collection which might be relevant for equality policies are included in the framework legislation on official statistics and in the framework legislation on protection of personal data which is also used when carrying out the National Census<sup>796</sup> and in specific legislation on personal data collection carried out for the prevention, investigation and combating of crimes.

#### 1.a. Provisions on data protection relevant for equality data

Law 677/2001 on the Protection of Persons regarding the Use of Personal Data and the Free Movement of Personal Data<sup>797</sup> defines personal data in Article 3 as 'any information referring to a natural person, identified or identifiable; an identifiable person is a person who can be identified, directly or indirectly, particularly with reference to an identification number or to one or more factors specific to details of his/her physical, physiological, economic, cultural or social characteristics and identity'. Article 7 of Law 677/2001 defining sensitive data has been wrongly invoked by the authorities as precluding the collection of 'personal data regarding racial or ethnic origin, political, religious, philosophical or similar beliefs and trade union membership, as well as personal data regarding health status or sexual life'.<sup>798</sup> The National Supervisory Authority for Personal Data Processing has not issued any secondary norms explaining the content of Article 7 on what constitutes sensitive data in the Law 677/2001.<sup>799</sup> In secondary legislation adopted by the Authority, the categories of data listed in Article 7 of Law 677 are repeated and further qualified as 'personal data the use of which triggers specific risks to the rights and liberties of the individual', generating an obligation for the data operators to notify the Authority at least 30 days before starting to collect data.<sup>800</sup> However, collection of personal data should still be possible under certain exemptions, as provided by Article 7 (2) of Law 677/2001. These exemptions are identical to those allowed by Article 8.2 of Directive 95/46/EC.<sup>801</sup>

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<sup>796</sup> Information regarding the most recent census in Romania (2011) is available at: <http://www.recensamantromania.ro>. All links last accessed on 14 January 2016.

<sup>797</sup> Romania, Law 677/2001 on the Protection of Persons regarding the Use of Personal Data and the Free Movement of Personal Data, 21 November 2001 (*Lege pentru protecția persoanelor cu privire la prelucrarea datelor cu caracter personal și libera circulație a acestor date*) available at: [http://dataprotection.ro/index.jsp?page=legislatie\\_primara&lang=en](http://dataprotection.ro/index.jsp?page=legislatie_primara&lang=en).

<sup>798</sup> Romania, Law 677/2001 on the Protection of Persons regarding the Use of Personal Data and the Free Movement of Personal Data, 21 November 2001.

<sup>799</sup> National Supervisory Authority for Personal Data Processing (*Autoritatea Națională de Supraveghere a Prelucrării Datelor cu Caracter Personal*). Response 0000347 from 11 January 2016.

<sup>800</sup> Romania, Decision of the National Supervisory Authority for Personal Data Processing on Establishing the Categories of Operations of Personal Data Use Susceptible to Presenting Special Risks for the Rights and Liberties of Persons (*Autoritatea Națională de Supraveghere a Prelucrării Datelor cu Caracter Personal, Decizia 11/2009, DECIZIE privind stabilirea categoriilor de operațiuni de prelucrare a datelor cu caracter personal, susceptibile de a prezenta riscuri speciale pentru drepturile și libertățile persoanelor*), 15 March 2009.

<sup>801</sup> Romania, Law 677/2001 on the Protection of Persons regarding the Use of Personal Data and the Free Movement of Personal Data, 21 November 2001. Art. 7(2): '(2) The provisions of paragraph (1) do not apply in the following situations:

- a) when the data subject has expressly given his/her consent for such data processing;
- b) when the processing is required in order to meet the obligations or specific rights of the data controller in the field of labour law, in accordance with the legal guarantees; a possible disclosure to a third party of the processed data may take place only if the data controller is legally required to do so, or if the data subject has expressly agreed to the disclosure;
- c) when the processing is required in order to protect the data subject's life, physical integrity or health or that of another person who is legally or physically unable to express his/her consent;

### 1.b. Provisions on statistics relevant for equality data

Law 226/2009 on the Organisation and the Functioning of Official Statistics in Romania<sup>802</sup> provides the framework for the National Institute of Statistics<sup>803</sup> and aims to organise public statistics, 'so that national plans and national or local development plans are formulated, implemented, monitored and assessed'. The law claims to transpose the acquis.<sup>804</sup> Article 4 of Law 226/2009 defines statistical data as 'individual or aggregate data collected on request, within a statistical survey, by a producer of official statistics'. Individual data are defined in the same article as 'data of a personal nature concerning an identified or identifiable natural person or data concerning an economic operator with or without legal status, collected by official statistical services based on statistical programmes, exclusively intended for processing for statistical purposes'. In Article 24 (2), Law 226/2009, when setting out the rights of the data providers, mentions sensitive types of data and the regime for their collection.<sup>805</sup> Article 35 of Law 226/2009 establishes the conditions under which individual data can be disseminated.<sup>806</sup> The law does not specifically mention any type of equality data.

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- d) when the processing is carried out as part of the legitimate activities of a foundation, association or of any other non-profit organisation with a political, philosophical, religious or trade-union profile, provided that the data subject is a member of that organisation or has regular contacts with the organisation in its activity profile, and provided that the data shall not be disclosed to a third party without the data subject's consent;
  - e) when the processing refers to data expressly made public in a clear way by the data subject;
  - f) when the processing is required in order to ascertain, exert or defend a right in a court of law;
  - g) when the processing is required for preventive medical care, to establish a medical diagnosis, to provide medical care or treatment in the interest of the data subject, or to manage health services that are in the best interest of the data subject, on the condition that the processing of that data is performed by, or under the supervision of medical staff pledged to professional secrecy or by or under the supervision of another person subject to a similar obligation regarding secrecy;
  - h) where there is a specific legal provision regarding the protection of an important public interest, on the condition that the processing is carried out in compliance with the rights of the data subject and other legal guarantees provided by the present law.'

<sup>802</sup> Romania, Law 226/2009 on the Organisation and the Functioning of Official Statistics in Romania (*Legea organizării şi funcţionării statisticii oficiale în România*), 11 June 2009, amended by Law 211/2010 of 11 November 2010.

<sup>803</sup> National Institute of Statistics (*Institutul Naţional de Statistică*) information available at: <http://www.insse.ro>.

<sup>804</sup> The updated version of Law 226/2009, Law 211 of 11 November 2010 specifically mentions compliance, 'with the provisions of Regulation (EC) no. 223/2009 of the European Parliament and of the Council of March 11, 2009 on European statistics and repealing the Regulation (EC, Euratom) no. 1101/2008 of the European Parliament and of the Council on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities, Council Regulation no. 322/97 on Community statistics and Council Decision 89/383/EEC, Euratom establishing a Committee on the Statistical Programmes of the European Communities, as well as with the principles stipulated in the European Statistics Code of Practice'.

<sup>805</sup> Romania, Law 226/2009, Article 24: 'The natural persons' individual data concerning racial or ethnic origin, political, religious, philosophical or similar beliefs, trade union membership, criminal record, health and private life can only be collected and processed with the consent of the persons involved, while observing the provisions of Law No 677/2001 for people's protection as regards the processing of personal data and the free circulation of these data, with subsequent changes and additions, as well as the provisions of Chapter X'.

<sup>806</sup> Romania, Law 226/2009, Article 35:

- '(1) The individual data mentioned in Art. 32 paragraph (3) can only be disseminated for research purposes, in the following cases:
- a) if the data have the characteristics mentioned in Art. 36 paragraph (6) (individual data on institutions and organisations financed from the state budget carrying out activities of public interest);
  - b) if the natural or legal person providing statistical data gives their written consent to the dissemination of their individual data;
  - c) if the data were collected from public sources that are universally available;
  - d) if the data are disseminated in a form that does not allow the direct or indirect identification of the data providers they refer to.
- (2) On request, the National Institute of Statistics and the other producers of official statistics may provide scientific research units and researchers with depersonalised data, but only for the purpose of carrying out scientific research activities.
- (3) The access to individual data, under the terms of paragraph (2), shall only be allowed based on a contract between parties, which shall explicitly stipulate the purpose, the terms of use, how the data are employed and the users' obligation to communicate the results of the research, not to publish or submit them to a third party without the written consent of the producer of official statistics and to destroy these data after the results of the research are homologated.



The INS carries out the Household Labour Force Survey (AMIGO)<sup>807</sup> on a quarterly and an annual basis on the main sectors of the population (economically active - employment and economically inactive - unemployment), broken-down by various demographic and socio-economic characteristics, under international comparability conditions: age group, sex, educational level, type of area of residence, housing ownership type, economic activity, employment status and occupation group. The INS also conducts the EU-SILC survey annually, as the Life Quality Survey, and data are collected on income and living conditions, health, education, employment, working conditions, housing, household consumer durables, economic situation of households and material deprivation issues. The survey provides information on age, place of birth, marital status, nationality, year of immigration and disability or chronic disease.<sup>808</sup>

#### 1.c. Provisions on census data

Data collection during the census is carried out according to Law 677/2001, corroborated with the Government Ordinance 36/2007 on the Persons and Estates Census in Romania in 2011, which provides in Article 12 that: 'in order to ensure the exhaustive recording of individuals and data quality, during the census the following data are recorded and used: personal numerical code, ethnicity, religion and mother tongue, by means of voluntary statements from those interviewed, within the framework of Law 677/2001'.<sup>809</sup>

#### 1.d. Other types of relevant data collected

Institutions subordinated to the Ministry of Internal Affairs collect data within the framework of Law 238/2009 on the use of personal data by bodies and agencies of the Ministry of Internal Affairs in the activities of the prevention, investigation and combating crimes, as well as maintaining and ensuring public order.<sup>810</sup> The law transposes the Framework Decision 2008/977/JAI and Council Decision 2008/615/JAI and regulates the automatic and non-automatic use of personal data in the context of crime prevention and investigation and repeatedly mentions Law 677/2001 as the framework law, the agencies of the Ministry of Internal Affairs being registered as data operators. The law does not define sensitive data or equality data. Article 5 of Law 238/2009 lists the specific conditions in which data collection can take place without the consent of the individual and states that 'data collection is prohibited with regard to racial origin, certain religious or political beliefs, certain sexual conduct or membership of a certain movement or organisation which is not contrary to the law'.<sup>811</sup> Article 5 (6) mentions that data collection 'exclusively on these criteria' may be undertaken 'only if, in a specific case, they are needed in order to carry out the preliminary measures or the criminal investigation following the perpetration of a crime'. A general methodology, explaining the scope of the law, was adopted in 2010, as Instructions from the Ministry of Internal Affairs no. 27/2010 on the technical aspects for ensuring security in the use of personal data by bodies and agencies of the Ministry.<sup>812</sup>

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(4) The National Institute of Statistics and the other producers of official statistics shall be under the obligation to keep records of the users mentioned in paragraph (2), as well as of the purposes for which the individual data were provided.'

<sup>807</sup> In accordance with the Regulation of the European Parliament and of the Council no. 577/1998 on the organisation of a labour force sample survey in the European Community.

<sup>808</sup> In accordance with the Regulation of the European Parliament and of the Council no. 1177/2003 concerning Community statistics on income and living conditions (EU-SILC).

<sup>809</sup> Romania, Ordinance 36/2007 on the Persons and Estates Census in Romania for 2011 (17 August 2007) as modified by Romania, Law 170/2011 of 14 October 2011 (*Ordonanța de Guvern privind efectuarea recensământului populației și al locuințelor din România în anul 2011*).

<sup>810</sup> Romania, Law 238/2009 on the use of personal data by bodies and agencies of the Ministry of Internal Affairs in the activities of the prevention, investigation and combating of crimes as well as maintaining and ensuring public order, 10 June 2009 (*Lege nr. 238 din 10 iunie 2009 privind reglementarea prelucrării datelor cu caracter personal de către structurile/unitățile Ministerului Administrației și Internelor în activitățile de prevenire, cercetare și combatere a infracțiunilor, precum și de menținere și asigurare a ordinii publice*).

<sup>811</sup> Romania, Law 238/2009 on the use of personal data by bodies and agencies of the Ministry of Internal Affairs in the activities of the prevention, investigation and combating of crimes as well as maintaining and ensuring public order, 10 June 2009, Art. 5(5).

<sup>812</sup> Romania, Instructions from the Ministry of Internal Affairs no. 27/2010 on the technical aspects for ensuring



There are specific provisions prohibiting the collection of some equality data. For example, Article 5 (5) of Law 489/2006 on Religious Freedom and the General Regime of Religious Denominations establishes the limitations for data collection on grounds of religion: 'the processing of personal data concerning religious beliefs or membership of particular denominations is prohibited, except for the case of a national census as sanctioned under the law or a situation where the individual concerned has provided their explicit consent to that effect'.<sup>813</sup>

There is no guidance published by any of the national authorities as to how to implement/interpret the existing legislation on equality data collection as the concept of equality data is not yet in use.

| Consent | Employment | Health/life | Public | Members | Legal claim | Medicine | Public interest – Other |
|---------|------------|-------------|--------|---------|-------------|----------|-------------------------|
| X       | X          | X           | X      | X       | X           | X        | X                       |

## 2. Definitions and categories used to collect equality data

There is no legal obligation to collect equality data and no framework in this regard. The response of most authorities to official requests is that they do not collect equality data regarding their beneficiaries or their own staff. The National Institute of Statistics did not respond to a specific public information request regarding the type of equality data collected, periodicity and methodology, and referred instead to the information available on its website (a significant proportion of which is not free of charge).<sup>814</sup> In practice, a review of the National Statistical Programme (*Programul Statistic Național Anual*), the TEMPO online database<sup>815</sup> and the metadata database available on the website of the National Institute of Statistics,<sup>816</sup> as well as of the catalogues containing the publications produced by the Institute,<sup>817</sup> reveals that data such as gender, age, marital status, ethnic origin, level of education, income and type of residence (rural/urban) are collected by the Institute on a regular basis (either twice a year or during the census).<sup>818</sup>

During the last census in 2011 the personal data requested included date of birth (age), gender, marital status, number of children, international and domestic migration, citizenship, residence, ethnic origin, mother tongue, religion, level of education, employment status and information regarding work and social protection, and disability.<sup>819</sup> In relation to ethno-cultural identity, only one option was possible; multiple affiliations were not allowed. Questions regarding disabilities were asked only to people born before 2006 and regarded the type of 'difficulties in carrying out daily activities', the level of difficulty and causes, as well as access to a personal assistant.

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security in the use of personal data by the bodies and agencies of the Ministry, 12 February 2010 (*Instrucțiunile MAI nr. 27/2010 privind măsurile de natură organizatorică și tehnică pentru asigurarea securității prelucrărilor de date cu caracter personal efectuate de către structurile/unitățile MAI*).

<sup>813</sup> Romania, Law 489/2006 on Religious Freedom and the General Status of Religions, 28 December 2006, Art. 5 (6).

<sup>814</sup> National Statistics Institute, response to a public information request of 15 December 2015, on file with the author.

<sup>815</sup> Available at: [www.insse.ro/cms/](http://www.insse.ro/cms/).

<sup>816</sup> Available at: <http://colectaredate.insse.ro/metadata/view.htm>.

<sup>817</sup> Available at: [www.insse.ro/cms/files/catalog/Catalogul\\_publicatiilor\\_INS-2015.pdf](http://www.insse.ro/cms/files/catalog/Catalogul_publicatiilor_INS-2015.pdf).

<sup>818</sup> From the website it is unclear which data are collected annually and which twice a year, and in the official response the Institute referred to the website.

<sup>819</sup> Available at: [www.recensamantromania.ro/instrumentar/](http://www.recensamantromania.ro/instrumentar/).

Racial origin is not mentioned as one of the indicators for data collection. Ethnicity and mother tongue are indicators used during the census.<sup>820</sup>

The manual for the 2011 census defined ethnicity as 'the option of a person to belong to a group of people with common elements of civilisation and culture, through one or more characteristics such as language, religion, common traditions and customs, lifestyle and other specific characteristics'.<sup>821</sup> Mother tongue is defined as: 'the first language used regularly in the family of the person interviewed, during his or her early childhood'.<sup>822</sup> Religion is defined as: 'the creed or religious or spiritual option, regardless if this is manifested or not through affiliation to a permanent religious community'.<sup>823</sup>

Data regarding sexual orientation or gender identity is not mentioned as being collected in any of the surveys reviewed or by any of the authorities contacted.

### 3. Practical implementation

Lacking a statutory duty to collect equality data, all attempts to collect such data in practice have significant limitations. There is no coherent policy measures to collect equality data on any of the protected grounds. No encouraging practices had been identified and in relation to certain grounds such as racial origin or sexual orientation, no data is collected at all. A draft national strategy for equality still debated in March 2016 introduces an obligation to collect equality data but the document was not approved yet and no follow up legislation had been developed in this regard.

### 4. Key issues

There is no legal duty to collect equality data and there is no guidance from the Supervisory Authority regarding the methodology which could be used when collecting such data. Authorities are reluctant to collect "sensitive data" invoking the specific requirements in Art.7 of Law 677. Current collection of relevant data by specific institutions such as the social protection services or the education inspectorates is not correlated and coordinated and does not generate reliable, up-to-date, comprehensive information. No relevant case law in this regard was developed.

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<sup>820</sup> Manual available in Romanian on the website of the 2011 census, in Part 3 at page 72:

<http://www.recensamantromania.ro/instrumentar/>. In the manual with instructions for the 2011 census it is specified that questions regarding ethnicity, mother tongue and religion are optional questions and that they should be based on self-identification. Only one option is possible, the interviewees having to choose from a list, also including an open option where they can specify the name of the ethnic group as they wish it to be recorded (other). Alternatively, they can state that they refuse to declare their ethnic origin, language or religion and the census operator will record this refusal.

<sup>821</sup> Manual available in Romanian on the website of the 2011 census, in Part 3:

[www.recensamantromania.ro/instrumentar/](http://www.recensamantromania.ro/instrumentar/). Definition available on page 73.

<sup>822</sup> Manual available in Romanian on the website of the 2011 census, in Part 3:

[www.recensamantromania.ro/instrumentar/](http://www.recensamantromania.ro/instrumentar/). Definition available on page 73.

<sup>823</sup> Manual available in Romanian on the website of the 2011 census, in Part 3:

[www.recensamantromania.ro/instrumentar/](http://www.recensamantromania.ro/instrumentar/). Definition available on page 73.

## 24. Slovakia

**Expert: Šarlota Pufflerová**

### 1. Relevant legal framework

A duty to collect equality data is not specifically contained in any piece of Slovak legislation. However, it could be argued that an obligation to collect equality data on “all grounds” (i.e. an open list) is implicitly enshrined in the Anti-discrimination Act (ADA) as part of the duty to adopt measures to prevent discrimination.<sup>824</sup> The State Statistics Act<sup>825</sup> regulates the collection of statistical data from administrative registers and processes, surveys and the population census (governed by a special Act)<sup>826</sup> in order to assess socio-economic developments. Both acts oblige natural persons to participate (free of charge) in data collection, otherwise they may face a fine amounting to a maximum of EUR 3,320.<sup>827</sup> Furthermore, the legislation authorises selected institutions, particularly in the areas of healthcare, health statistics, public health, health insurance, social insurance, social services and education, to collect equality data. Among the categories relevant for this summary are age, citizenship, place of birth, nationality, mother tongue, religion, state of health (e.g. sexually transmitted diseases, drug abuse) and disability.

The Constitution prohibits unauthorised collection, disclosure or any other misuse of personal data on all grounds.<sup>828</sup> The Freedom of Information Act (FOIA)<sup>829</sup> permits disclosure of information containing personal data only with prior written consent from the data subject. The Personal Data Protection Act (PDPA)<sup>830</sup> regulates equality data (all grounds) collection and processing mostly in congruence with the Directive 95/46/EC. If the data are collected on a consensual and anonymous basis and processed in such a way that a natural person cannot be identified, directly or indirectly, the PDPA allows data handling.<sup>831</sup> In conformity with Article 8.1 of the Directive 95/46/EC,<sup>832</sup> the PDPA prohibits the processing of ‘special categories of data’, extending the prohibition to ‘membership of political parties or political movements’. Moreover, the PDPA restricts the unwarranted processing of data related to biometric data, psychological identity and mental capacity.<sup>833</sup> The scope of exemptions from the PDPA is nearly identical to that of Articles 8.2-8.4 of Directive 95/46/EC, besides exemptions related to the provision of social insurance, social benefits, social services, material aid, social security for police officers and soldiers, social integration of people with severe disabilities, legal protection and custody of children, and exemptions in the area of labour law and employment services.

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<sup>824</sup> Slovakia, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection Against Discrimination, 20 May 2004 (*Zákon z 20. Mája 2004 O rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou a o zmene a doplnení niektorých zákonov (antidiskriminačný zákon)*), Section 2(1) and (3), available at: [www.slov-lex.sk/pravne-predpisy/SK/ZZ/2004/365/20160102](http://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2004/365/20160102).

<sup>825</sup> Slovakia, Act No. 540/2001 Code of Acts on State Statistics in the wording of later regulations, as amended, 29 November 2001, available at: <http://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2001/540/20160101>.

<sup>826</sup> Slovakia, Act No. 263/2008 Coll. on Population and Housing Census, and on changing and supplementing other laws, as amended, 18 June 2008, Section 3, available at: <http://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2008/263/20080801>.

<sup>827</sup> Slovakia, State Statistics Act, Section 32(1) (a).

<sup>828</sup> Constitution, Article 16(1), Article 19(2) and (3).

<sup>829</sup> Slovakia, Act No. 211/2000 Coll. on free access to information and amending and supplementing certain laws, 17 March 2000, Section 9(2), available at: [www.slov-lex.sk/pravne-predpisy/SK/ZZ/2000/211/20160101](http://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2000/211/20160101).

<sup>830</sup> Slovakia, Act No. 122/2013 Coll. on Protection of Personal Data and changing and supplementing other laws, as amended, 28/05/2013, available at: [www.slov-lex.sk/pravne-predpisy/SK/ZZ/2014/136/20140530](http://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2014/136/20140530)

<sup>831</sup> PDPA, Section 4(1) and (2) (b).

<sup>832</sup> Directive 95/46/EC of the European Parliament and of the Council of the 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, available at: [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.1995.281.01.0031.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.1995.281.01.0031.01.ENG).

<sup>833</sup> PDPA, Section 13(5) and (3).

| Consent | Employment | Health/life | Public | Members | Legal claim | Medicine | Public interest – Other |
|---------|------------|-------------|--------|---------|-------------|----------|-------------------------|
| X       | X          | X           | X      | X       | X           | X        | X                       |

The law<sup>834</sup> allows the processing of personal data without the consent of the data subject in several circumstances, one of them being by the Social Insurance Agency. In practice, this institution has raised some concerns, since until recently it collected non-anonymous data on the nationality of people newly registered for social insurance by their employer (now citizenship).<sup>835</sup> In the case of unlawful processing of personal data, a sanction of between EUR 1,000 and EUR 50,000 may be imposed on a controller (EUR 1,000 and EUR 200,000 if malpractice concerns the special category of personal data).<sup>836</sup> The Statistical Office of the Slovak Republic (SO SR) can impose a maximum EUR 1,660 sanction on a controller for the breach of confidentiality of data.<sup>837</sup> It is unclear whether any sanction has been imposed.

## 2. Definitions and categories used to collect equality data

There are no definitions of any categories used for equality data collection practices in national law (only lists of grounds). In the absence of legal definitions, stakeholders (authors of official statistics, academics, lawyers, NGO activists and representatives of the public administration) differ in their understanding of each category. Particularly contentious are the definitions related to ethnicity and gender.

Ethnicity often involves several overlapping terms. The most confusing of them is “nationality” (*národnosť*), not in the sense of citizenship, but as a constitutionally guaranteed right to national affiliation that everyone has a right to choose.<sup>838</sup> Categories such as “ethnicity” (*etnicita*), “religion” (*náboženstvo*), language (*jazyk*) and “national origin” (*národnostný pôvod*) intersect in the term “nationality”, though they are also categories on their own. Generally, “nationality” pertains to national minorities, while “ethnicity” belongs to ethnic groups. National minorities and ethnic groups (currently 13 are recognised in Slovakia) have rights guaranteed, but features not distinguished by the Constitution.<sup>839</sup> A person can only choose to be affiliated (e.g. in the census) to one “nationality” (Slovak, Roma, Hungarian, Jewish, Czech, German, etc.) or “ethnicity” (e.g. Vietnamese). Some researchers believe the dividing criterion for having a “nationality” (as opposed to having only ethnicity) is having political ambitions.<sup>840</sup> During the 2011 census, the single choice of “nationality” caused a lot of turmoil, for instance Slovak citizens who were ethnic Roma, but Hungarian speakers would have to choose between Slovak, Roma or Hungarian “nationality”.<sup>841</sup>

<sup>834</sup> Slovakia, Act No. 461/2003 Coll. on social insurance, as amended, 30 October 2003, Section 170, available at: [www.slov-lex.sk/pravne-predpisy/SK/ZZ/2003/461/20160305](http://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2003/461/20160305).

<sup>835</sup> The electronic registration form of an employee sent by their employer to the database of the Social Insurance Agency (access to the database is enabled only for persons authorised by the employer).

<sup>836</sup> PDPA, Section 68(3).

<sup>837</sup> State Statistics Act, Section 32(1) (b).

<sup>838</sup> Pufflerová, Š. (2009), *Slovakia country report No.1*, Network of Socio-economic Experts in the Non-discrimination Field, Bratislava.

<sup>839</sup> Constitution, the Fourth Chapter.

<sup>840</sup> Lajčáková, J. (2012) *Národnosť a etnicita pri zbere štatistických a osobných dát* [Nationality and ethnicity in statistical and personal data], In: Kotvanová, A. (ed.) (2012), *Dáta o rovnosti v slovenskej realite* [Equality data in Slovak reality], Bratislava, available at: <http://diskriminacia.sk/zbornik-data-o-rovnosti-a-pravne-aspekty-rovnakeho-zaobchadzania-v-slovenskej-realite/>.

<sup>841</sup> Chudžíková, A. (2012), ‘Census results confirm assumed assimilation and stigmatization trends’, in *Minority policy in Slovakia: Critical quarterly of the Center for the Research of Ethnicity and Culture*, issue 01, pp. 12-14, available at: [http://cvek.sk/wp-content/uploads/2015/12/Minority-policy-1\\_2012.pdf](http://cvek.sk/wp-content/uploads/2015/12/Minority-policy-1_2012.pdf), accessed 17 January 2016.

The category of “gender” (*rod*) is often misunderstood by the authorities as being synonymous with the category of “sex” (*pohlavie*) (i.e. referring to inequality between women and men).<sup>842</sup> Although “gender” partially mirrors “sex”, non-binary gender identities are still commonly not considered (in state statistics and surveys). Data on trans- and inter-sex people are thus extremely limited.<sup>843</sup> However, there are subtle signs of the incremental inclusion of “gender identity” under the ground of gender,<sup>844</sup> and the concept of intersectionality.<sup>845</sup>

The category of “family status” (e.g. used in the Census and EU-SILC) excludes LGBTI people (e.g. data on registered partnerships). Only heterosexual marriages are legally recognised, which was affirmed by the recent change to the Constitution.<sup>846</sup> The category of religion only covers the 22 officially recognised, mostly Christian denominations (besides Baha-i). Muslims are monitored only as a potentially terrorist group.<sup>847</sup>

### 3. Practical implementation

Equality data collection has not been implemented in practice. Presently, there is no institution with authority over the development of a national knowledge base on equality and no unified explicit national strategy on equality data.<sup>848</sup>

The government of 2012-2016 adopted some formalist measures to create the impression it was pursuing an equality data agenda, but in reality it completely failed to take any action. The multi-disciplinary working group created under the auspices of the Slovak Government Council for Human Rights, National Minorities and Gender Equality<sup>849</sup> has been inactive since 2012. The new Unified Methodology of Assessing Selected Impacts<sup>850</sup> ignores the necessity of putting equality data at the basis of impact assessment. In terms of policy measures, there are national strategies and action plans that contain clauses on equality data collection. The National Strategy for Human Rights Protection and Promotion in Slovakia,<sup>851</sup> together with the Action Plan to Prevent All Forms of Discrimination 2016-2019,<sup>852</sup> require relevant institutions to draft the analysis of needs and barriers to sensitive data collection. The Action Plan to Prevent and Eliminate All Forms of Racism, Xenophobia, Anti-Semitism and Other Forms of Intolerance 2016 -2018<sup>853</sup> demands that institutions continuously support research into

<sup>842</sup> “Rod” can also be mistaken for “lineage” (*pokolenie*) which is the older meaning of the word.

<sup>843</sup> Macko, M., Director of Iniciatíva Inakosť. Email to the author on equality data, 11 January 2016. Personal communication.

<sup>844</sup> Gender identity in the Database of Gender Competence (*Databáza rodovej kompetencie*), available at: <https://genderdatabaza.wordpress.com/tag/rodova-identita/>.

<sup>845</sup> Not synonymous with, but presupposing multiple grounds.

<sup>846</sup> Constitution, Article 41(1).

<sup>847</sup> Pufflerová, Š. (2012), *Slovakia country report No.2: Discrimination on the ground of religion or belief*, Network of Socio-economic Experts in the Non-discrimination Field, Bratislava.

<sup>848</sup> Requests for information were submitted by the author pursuant to the FOIA in December 2015.

<sup>849</sup> Council for Human Rights, National Minorities and Gender Equality (*Rada vlády SR pre ľudské práva, národnostné menšiny a rodovú rovnosť*) (2011), *Pracovné skupiny Rady* [Working groups of the Board], Government Office of the Slovak Republic, available at: <http://www.radavladylp.gov.sk/pracovne-skupiny-rady/>.

<sup>850</sup> Ministry of Economy of the Slovak Republic (2015), ‘*Jednotná metodika na posudzovanie vybraných vplyvov*’ (Unified methodology for assessing selected impacts), available at: [www.economy.gov.sk/jednotna-metodika-iys/138426s](http://www.economy.gov.sk/jednotna-metodika-iys/138426s).

<sup>851</sup> Council of Europe, *National Strategy for Human Rights Protection and Promotion in Slovakia*, available at: [www.coe.int/t/commissioner/source/NAP/Slovakia-National-Action-Plan-on-Human-Rights.pdf](http://www.coe.int/t/commissioner/source/NAP/Slovakia-National-Action-Plan-on-Human-Rights.pdf).

<sup>852</sup> Ministry of Justice of the Slovak Republic, Ministry of Labour, Social Affairs and Family of the Slovak Republic (2015), *Akčný plán predchádzania všetkým formám diskriminácie na roky 2016-2019* (Action Plan to Prevent All Forms of Discrimination 2016-2019), available at: [www.rokovania.sk/Rokovanie.aspx/BodRokovaniaDetail?idMaterial=25270](http://www.rokovania.sk/Rokovanie.aspx/BodRokovaniaDetail?idMaterial=25270).

<sup>853</sup> Deputy Prime Minister for Investment, Ministry of Interior of the Slovak Republic (2016), *Akčný plán predchádzania a eliminácie rasizmu, xenofóbie, antisemitizmu a ostatných foriem intolerance na roky 2016-2018* (Action Plan to Prevent and Eliminate All Forms of Racism, Xenophobia, Antisemitism and Other Forms of Intolerance 2016-2018), available at: [www.rokovania.sk/Rokovanie.aspx/BodRokovaniaDetail?idMaterial=25250](http://www.rokovania.sk/Rokovanie.aspx/BodRokovaniaDetail?idMaterial=25250).



racism and xenophobia until 2018. A proposal in the Action Plan for LGBTI People for 2016-2019<sup>854</sup> sets out the task of collecting anonymous data on sexual orientation and gender identity. However, no extra budget has been designated for equality data-related tasks in any of these action plans, implying a lack of genuine institutional commitment.

Of 49 public institutions asked,<sup>855</sup> many were unaware of or refuted the requirement to collect equality data. Apart from a few exceptions, none had working groups, action plans or internal directives regulating equality data collection. The SO SR, as a central body for state statistics,<sup>856</sup> declared it has an action plan running until 2017, covering data categories, in accordance with the national strategies and action plans, and a working group composed of internal and external experts commenting on new surveys. The SO SR runs a population census once a decade (most recently in 2011),<sup>857</sup> EU-SILC annually (focused on age and family status in the area of social exclusion),<sup>858</sup> ESS (Eurostat)<sup>859</sup> and LFS.<sup>860</sup> The Institute for Labour and Family Research (ILFR)<sup>861</sup> seemed to produce good practice cooperating with different equality groups (homeless people, LGBT people)<sup>862</sup> and enabling their active participation in all stages of a survey. Apart from the SO SR and ILFR (which use self-identification), third-party categorisation is utilised by institutions in data collection.

Although Article 31 of the UNCRPD took effect in 2010, issues remain connected to the accessibility, coordination and comparability of the collected data, and the non-collection of some data (e.g. barriers in the physical environment).<sup>863</sup> Disability data are mostly

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<sup>854</sup> Ministry of Justice of the Slovak Republic (2015), *Akčný plán pre LGBTI ľudí na roky 2016-2019* (Action Plan for LGBTI People for 2016-2019), available at: <https://lt.justice.gov.sk/Attachment/vlastny%20material.docx?instEID=1138&attEID=83626&docEID=447367&matEID=8567&langEID=1&tStamp=20151020161339670>.

<sup>855</sup> Requests for information were submitted by the author pursuant to the FOIA in December 2015.

<sup>856</sup> SO SR (2016), 'About us', available at: [http://slovak.statistics.sk/wps/portal/ext/aboutus!/ut/p/b1/04\\_Sj9CPyKssy0xPLMnMz0vMAfGjzOIDzT0tnJwMHQ0s\\_FycDDzNfcwDLTYdjP2djIAKIoEKDHAARwN0\\_UGuBp4hjgHuQV4mhqYmplD9eBQOsD9cPwgsxNnd0cPE3MfAwMLH3dTA09EjNMgy0NjYwNEYqgCPE\\_088nNT9YNT8\\_QLckMjDLJMHAGSvJ5V/dl4/d5/L2dBISEvZ0FBIS9nQSEh/](http://slovak.statistics.sk/wps/portal/ext/aboutus!/ut/p/b1/04_Sj9CPyKssy0xPLMnMz0vMAfGjzOIDzT0tnJwMHQ0s_FycDDzNfcwDLTYdjP2djIAKIoEKDHAARwN0_UGuBp4hjgHuQV4mhqYmplD9eBQOsD9cPwgsxNnd0cPE3MfAwMLH3dTA09EjNMgy0NjYwNEYqgCPE_088nNT9YNT8_QLckMjDLJMHAGSvJ5V/dl4/d5/L2dBISEvZ0FBIS9nQSEh/).

<sup>857</sup> Census, available at: [https://slovak.statistics.sk/wps/portal/ext/themes/demography/census/indicators!/ut/p/b1/jZLNToQwFEYfqR-0\\_C0LA6WKWFrAkY1hMZmgzoyJxue3q2wmxGJ3Tc9pv3tvyUD2ZDiP39Nx\\_Jou5\\_H9uh\\_CI75ScZp6HHH54EEWlepV3no6hQWeLYA\\_FsfsN5Fc\\_FrnkC1XQ8x8DyxYfAdw9QuifJ4wke30Y2GPMz82VeqD3uJnqpcsqoC4EqEkLzu\\_dNJSC0\\_Idzxwm\\_8-yyDroN0FfU1Vzlb5V4DL59jwV\\_0LIthi0wG9qcHaXwGu\\_olwo34LbPTviQwz4prADLi-yNaQh9sUImptitpW2ccNbrJ\\_4wZbRV1eTqdiPt\\_Ix6n7XXtM8pXxHzS8dEU!/dl4/d5/L2dBISEvZ0FBIS9nQSEh/](https://slovak.statistics.sk/wps/portal/ext/themes/demography/census/indicators!/ut/p/b1/jZLNToQwFEYfqR-0_C0LA6WKWFrAkY1hMZmgzoyJxue3q2wmxGJ3Tc9pv3tvyUD2ZDiP39Nx_Jou5_H9uh_CI75ScZp6HHH54EEWlepV3no6hQWeLYA_FsfsN5Fc_FrnkC1XQ8x8DyxYfAdw9QuifJ4wke30Y2GPMz82VeqD3uJnqpcsqoC4EqEkLzu_dNJSC0_Idzxwm_8-yyDroN0FfU1Vzlb5V4DL59jwV_0LIthi0wG9qcHaXwGu_olwo34LbPTviQwz4prADLi-yNaQh9sUImptitpW2ccNbrJ_4wZbRV1eTqdiPt_Ix6n7XXtM8pXxHzS8dEU!/dl4/d5/L2dBISEvZ0FBIS9nQSEh/).

<sup>858</sup> *Metodické vysvetlivky: Príjmy a životné podmienky domácností* (EU SILC), available at: [www.statistics.sk/pls/elsw/objekt.sendName?name=m\\_silk](http://www.statistics.sk/pls/elsw/objekt.sendName?name=m_silk).

<sup>859</sup> Selected tables from the Eurostat database, available at: <http://datacube.statistics.sk/TM1Web/TM1WebLogin.aspx>

<sup>860</sup> Labour Force Survey, available at: [https://slovak.statistics.sk/wps/portal/ext/themes/demography/labour/metadata!/ut/p/b1/IZNdT4MwFIZ\\_EqeFUbhsmUBdQdoOnNyYXRqzdZuJxt8vnYsRmh1me9X0eXL68Z6gDzZBF9h-7Z63n7vjYfvm1n38qJIMhCACgGZLkKIyOqoaChUbgIcBgAuDw8nPbUN5GhXZ0tzlINcZTayKKRTx2c8KXkZMAS\\_SqWIDkZWtSHYbAw-vqIwWc36nmX0\\_KioDMVdM1N2tiBjz9X6Bg6wGoa9t2iQ51Ssf-ZNvEU98v8D\\_fB0b3TxYMHm3bAnQWQNGzjwBjX3QUJKsNWWldNCzyfA9AfGJmfAcgPm8XuO-A8f8LFYK8Xdm6zHIapeHU9wHMHkzfYHX5QwrM-PdBf0KwDjgBWlUihTebugKbQhXyuTXs8h-AB4xwZigNEMBzgrXeGyVNBmAGGd6jL4\\_4psB-vwfu-TM2sJNuvkTfM\\_t2og!!/dl4/d5/L0IHSkovd0RNOU5rOUVnQSEhLzRKUUUvZW4/](https://slovak.statistics.sk/wps/portal/ext/themes/demography/labour/metadata!/ut/p/b1/IZNdT4MwFIZ_EqeFUbhsmUBdQdoOnNyYXRqzdZuJxt8vnYsRmh1me9X0eXL68Z6gDzZBF9h-7Z63n7vjYfvm1n38qJIMhCACgGZLkKIyOqoaChUbgIcBgAuDw8nPbUN5GhXZ0tzlINcZTayKKRTx2c8KXkZMAS_SqWIDkZWtSHYbAw-vqIwWc36nmX0_KioDMVdM1N2tiBjz9X6Bg6wGoa9t2iQ51Ssf-ZNvEU98v8D_fB0b3TxYMHm3bAnQWQNGzjwBjX3QUJKsNWWldNCzyfA9AfGJmfAcgPm8XuO-A8f8LFYK8Xdm6zHIapeHU9wHMHkzfYHX5QwrM-PdBf0KwDjgBWlUihTebugKbQhXyuTXs8h-AB4xwZigNEMBzgrXeGyVNBmAGGd6jL4_4psB-vwfu-TM2sJNuvkTfM_t2og!!/dl4/d5/L0IHSkovd0RNOU5rOUVnQSEhLzRKUUUvZW4!/)

<sup>861</sup> ILFR (2016), 'Library services for ILFR staff and wider public', available at: [www.ceit.sk/IVPR/index.php?option=com\\_php&Itemid=16&lang=en](http://www.ceit.sk/IVPR/index.php?option=com_php&Itemid=16&lang=en).

<sup>862</sup> Macko, M., Director of Iniciatíva Inakosť. Email on equality data to the author, 11 January 2016. Personal communication.

<sup>863</sup> Committee for Persons with Disabilities (*Výbor pre osoby so zdravotným postihnutím*) (2014), *Národný program rozvoja životných podmienok osôb so zdravotným postihnutím na roky 2014 – 2020* [National programme for improving the living conditions of people with disabilities 2014-2020], Ministry of Labour, Social Affairs and Family of the Slovak Republic, available at: [www.tsk.sk/buxus/docs/dokumenty/dokumenty\\_socialna\\_pomoc/narodne\\_programy/Narodny\\_program\\_rozvoja\\_zivotnych\\_podmienok\\_osob\\_so\\_zdravotnym\\_postihnutim\\_na\\_roky\\_2014\\_az\\_2020.pdf](http://www.tsk.sk/buxus/docs/dokumenty/dokumenty_socialna_pomoc/narodne_programy/Narodny_program_rozvoja_zivotnych_podmienok_osob_so_zdravotnym_postihnutim_na_roky_2014_az_2020.pdf).

acquired from two non-compatible sources: LFS<sup>864</sup> and the special register of job seekers maintained by the Central Office of Labour, Social Affairs and Family.<sup>865</sup>

Data on equality groups mainly originate from NGOs. For instance, Queer Leaders Forum has published a report on the data generated by its counselling centre.<sup>866</sup> Iniciatíva Inakosť gathers data via the website [homophobia.sk](http://homophobia.sk) where people can report incidents of homophobia (victim surveys).<sup>867</sup> Equality data have been used by NGOs to prove indirect discrimination before the courts,<sup>868</sup> mostly by the Centre for Civil and Human Rights.<sup>869</sup>

#### 4. Key issues

The lack of disaggregated equality data (e.g. on Roma, immigrants, lesbians and transgender women)<sup>870</sup> and a proper data collection methodology (i.e. ensuring the principles of self-identification, anonymity and equality group involvement)<sup>871</sup> has been criticised by several international agencies. Collecting data in an aggregated form prevents institutions from assessing the situation properly, e.g. the National Labour Inspectorate has only one category ("discrimination") for the data from inspections. The absence of a legal or common definition of virtually every category complicates data collection on all grounds.<sup>872</sup> Institutions are not coordinated in their collection efforts, producing non-comparable and unreliable data.

There is a long-term absence of awareness, and also willingness, on the part of public institutions when it comes to equality data collection. In a survey on equality data pursuant to the FOIA among institutions (and a voluntary survey in private organisations) in 2010,<sup>873</sup> the findings showed that none of the respondents were aware of their duty to observe the principle of equality or to collect equality data (many believed it to be prohibited by the PDPA). In a survey among institutions from 2015 not

<sup>864</sup> The SO SR collects data on disability in relation to employment (part/full-time), unemployment and economic inactivity. Inštitút zamestnanosti (2006), *Ekonomická aktivita zdravotne postihnutých*, available at: [www.iz.sk/sk/stanoviska/ekonomicka-aktivita-ZP](http://www.iz.sk/sk/stanoviska/ekonomicka-aktivita-ZP).

<sup>865</sup> The Central Office of Labour, Social Affairs and Family collects data on the extent (at least 20%) and form (physical, mental, etc.) of disability. Úrad práce, sociálnych vecí a rodiny, *Žiadosť o zaradenie do evidencie uchádzačov o zamestnanie*, available at: [www.upsvar.sk/buxus/docs/SSZ/OISS/Ziadost\\_o\\_zaradenie\\_do\\_evidencie\\_UoZ.pdf](http://www.upsvar.sk/buxus/docs/SSZ/OISS/Ziadost_o_zaradenie_do_evidencie_UoZ.pdf).

<sup>866</sup> Schlesinger, R., eds., (2015), *Správa o situácii LGBT ľudí - Akú pomoc hľadali LGBT ľudia v Q-Centre 2011-2014*, Bratislava, Queer Leaders Forum.

<sup>867</sup> Iniciatíva Inakosť (2011), *Homofobia - Vitajte* [Homophobia - Welcome], available at: [www.homofobia.sk/sk/Vitajte](http://www.homofobia.sk/sk/Vitajte).

<sup>868</sup> Debrecéniová, J. (2014), *Report on measures to combat discrimination Directives 2000/43/EC and 2000/78/EC - Country report 2014, Slovakia*, European network of legal experts in gender equality and non-discrimination.

<sup>869</sup> Center for Civil and Human Rights (2015), *Verejné žaloby ako nástroj účinnej právnej ochrany pred diskrimináciou* [Actio popularis as a tool for effective legal protection against discrimination], Košice, available at: [www.poradna-prava.sk/sk/dokumenty/verejne-zaloby-ako-nastroj-ucinnej-pravnej-ochrany-pred-diskriminaciou/](http://www.poradna-prava.sk/sk/dokumenty/verejne-zaloby-ako-nastroj-ucinnej-pravnej-ochrany-pred-diskriminaciou/)

<sup>870</sup> UN CEDAW (2015), *Concluding observations on the combined fifth and sixth periodic reports of Slovakia*, 20 November 2015, p. 11, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fSVK%2fCO%2f5-6&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fSVK%2fCO%2f5-6&Lang=en).

<sup>871</sup> UN CERD (2013), *Concluding observations on the ninth to the tenth periodic reports of Slovakia, adopted by the Committee at its eighty-second session (11 February-1 March 2013)*, 17 April 2013, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsnuoHjUanErlv2U6qeQLk%2fFeDGLSG8EXur2NM3cvt4Ekhe%2fdixO%2fRtbuRSUKUdx649T%2bu5GRVeVRhyULyZ%2fuydyhv1OVeBwnP4ebn3u%2fXr%2fNrrV9CyXrtsJlshxNaDm5O%3d%3d>.

<sup>872</sup> Kotvanová, A. (eds.) (2012), *Dáta o rovnosti v slovenskej realite* [Equality data in Slovak reality], Bratislava, available at: <http://diskriminacia.sk/zbornik-data-o-rovnosti-a-pravne-aspekty-rovnakeho-zaobchadzania-v-slovenskej-realite/>.

<sup>873</sup> Hodoňová, S. (2010), *Analýza stavu a najčastejších problémov v oblasti zberu dát týkajúcich sa zakázaných dôvodov diskriminácie* [Analysis of the situation and the most frequent problems in the field of data collection regarding forbidden grounds of discrimination], available at <http://diskriminacia.sk/analiza-stavu-a-najcastejsich-problemov-v-oblasti-zberu-dat-tykajucich-sa-zakazanych-dovodov-diskriminacie/#more-1349>.



much has changed (apart from them no longer invoking the PDPA).<sup>874</sup> Formalist solutions by the upper echelons of the government (who are more aware of the equality data requirements) hint at the lack of political will.

Warning signs of equality data malpractice have arisen on several occasions, most recently in the education department. Firstly, the Ministry of Education became suspected of forcing schools under the threat of sanctions to collect personal data (sex and education) of parents unlawfully.<sup>875</sup> The practice was halted, due to public outcry, and the Minister apologised.<sup>876</sup> Secondly, the Public Defender of Rights alluded to misconduct by schools in obtaining informed consent from parents (especially of disadvantaged Roma children).<sup>877</sup> An infamous case of equality data misuse was also reported from the labour offices where Roma job seekers were secretly labelled with the letter "G" (for gypsy) by officers, resulting in them not being hired.<sup>878</sup> Such actions undermine public trust, which is already very low<sup>879</sup> and may further complicate equality data collection.

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<sup>874</sup> Requests for information were submitted by the author pursuant to the FOIA in December 2015.

<sup>875</sup> The News Agency of the Slovak Republic (TASR) (2015) 'Because of sensitive data collection the Ministry of Education is planning to change the law', *Teraz.sk*, 30 September 2015, available at: [www.teraz.sk/slovensko/ministerstvo-skolstva-zber-udajov/158133-clanok.html](http://www.teraz.sk/slovensko/ministerstvo-skolstva-zber-udajov/158133-clanok.html).

<sup>876</sup> TASR (2015), 'Liberals welcome changes in data collection about students and parents', *SME.sk*, 14 October 2015, available at: <http://domov.sme.sk/c/8036600/liberali-vitaju-zmeny-pri-zbere-udajov-o-ziakoch-a-rodicoch.html>.

<sup>877</sup> The Public Defender of Rights (2015), *Report of the Public Defender of Rights on findings from monitoring of obtaining informed consent from parents of children in elementary schools (with a special focus on the procedure of obtaining informed consent by schools from Roma parents of a pupil with a cultural, social and language barrier, as well as a pupil with special education)*, Bratislava, available at: [www.vop.gov.sk/spravy-z-prieskumov-a-priority-za-rok-2015](http://www.vop.gov.sk/spravy-z-prieskumov-a-priority-za-rok-2015).

<sup>878</sup> Trginová, L. (2015), *Towards the Duty-Based Approach Developing the Concept and Methodology of Anti-Discrimination Compliance Monitoring - A View from the Civil Society in Slovakia*, Göteborg University, available at: <https://qupea.ub.gu.se/handle/2077/41352?locale=en>.

<sup>879</sup> European Commission (2015) Eurobarometer interactive search system. [Online]. Available from: [http://ec.europa.eu/public\\_opinion/cf/index\\_en.cfm](http://ec.europa.eu/public_opinion/cf/index_en.cfm) [Accessed 27 February 2015].

## 25. Slovenia

**Expert: Sara Brezigar**

### 1. Relevant legal framework

The Slovenian Implementation of the Principle of Equal Treatment Act<sup>880</sup> requires the National Assembly of the Republic of Slovenia, the Government of the Republic of Slovenia, ministries and other state bodies and bodies of local communities to create the conditions for equal treatment between persons irrespective of any personal circumstance by raising awareness and monitoring the situation in this field and by taking regulatory and political actions within their powers (Article 9). Neither this act nor any other acts provide an explanation of which institution actually conducts the monitoring or what kind of monitoring should be carried out.

However, at least two other acts have an important impact on the collection and processing of equality data in Slovenia: the National Statistics Act<sup>881</sup> and the Personal Data Protection Act.<sup>882</sup> The National Statistics Act sets out the rules for collecting and processing (statistical) data in Slovenia, while the Personal Data Protection Act determines the rights, obligations, principles and measures to prevent unconstitutional, illegal and unjustified intrusion into the privacy and dignity of an individual when processing personal data (Article 1).

In accordance with Article 8 of the Personal Data Protection Act, personal data may only be processed if this is required by law or with the personal consent of the individual, if the person has been made aware in advance, in written form or in another appropriate manner, of the purpose of the processing of personal data. Even if the law requires the processing of personal data, the personal data collected must be adequate and the extent must be appropriate in relation to the purposes for which they are collected and further processed (Article 3).

The Personal Data Protection Act (Article 6) defines sensitive personal data as: 'data on racial, national or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, health, sexual life, inclusion in or removal from criminal records or records which are kept on the basis of the law regulating offences; also biometric characteristics are classified as sensitive data, if their use could lead to the identification of an individual according to the aforementioned circumstances'. Therefore, among the grounds of discrimination, only age (and possibly gender, but not gender identity or sexual orientation) is not treated as sensitive personal data in Slovenia.

Article 13 of the Personal Data Protection Act reflects Article 8 of the Data Protection Directive 95/46/EC<sup>883</sup> and states when sensitive personal data may be processed, which is summarised in the following table:

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<sup>880</sup> Slovenia, Implementation of the Principle of Equal Treatment Act (*Zakon o uresničevanju načela enakega obravnavanja*) (*Uradni list RS*, št. 93/07 – uradno prečiščeno besedilo), [www.pisrs.si/Pis.web/pregledPredpisa?sop=2004-01-2295](http://www.pisrs.si/Pis.web/pregledPredpisa?sop=2004-01-2295).

<sup>881</sup> Slovenia, National Statistics Act (*Zakon o državni statistiki*) (*Uradni list RS*, št. 45/95 in 9/01), [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO424](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO424).

<sup>882</sup> Slovenia, Personal Data Protection Act (*Zakon o varstvu osebnih podatkov*), official consolidated text (*uradno prečiščeno besedilo*) (*Uradni list RS*, št. 94/07), [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5245](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5245).

<sup>883</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, Official Journal L 281, 23/11/1995 P. 0031 – 0050, <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995L0046:en:HTML>.

| Consent | Employment | Health/life | Public | Members | Legal claim | Medicine | Public interest – Other |
|---------|------------|-------------|--------|---------|-------------|----------|-------------------------|
| X       | X          | X           | X      | X       | X           | X        | X                       |

Article 17 of the Personal Data Protection Act moreover establishes that personal data may be further processed for historical, statistical and scientific-research purposes, irrespective of the initial purpose of data collection. Personal data shall be supplied to the data recipient for this purpose in an anonymised form.<sup>884</sup> Data may be supplied in a non-anonymised form only if otherwise provided for by law, or if the individual to whom the personal data relate gave prior written consent, or if written consent for such publication has been given by the legal heirs of the first or second order to the deceased person.

Article 24 of the Personal Data Protection Act establishes that data controllers should provide personal data to data recipients against payment of the cost of supplying the data, unless otherwise established by law. This does not apply when data recipients and data controllers are public institutions, unless otherwise established by law or if it involves data use for historical, statistical or scientific-research purposes. In practice, some institutions, such as the police or the Statistical Office of Slovenia,<sup>885</sup> have a pricelist on their websites, whereas others, such as the Central Population Registrar,<sup>886</sup> have only a short explanation of the limits to access to personal data, as well as the internal procedure of the body used to assess such requests.

The Equalisation of Opportunities for Persons with Disabilities Act<sup>887</sup> defines which institutions collect (what kind of) data on persons with disabilities. The collection of these data serves predominantly administrative purposes (on benefits, equipment etc.) and it is not specifically designed to uncover discrimination.

There are no guidelines published by national authorities on how to implement/interpret the existing legislation on equality data collection. However, the Information Commissioner<sup>888</sup> reported that institutions often ask questions (usually pertaining to Roma) and that the Office of the Information Commissioner gives advice. Moreover, the Commissioner's website includes FAQs and some can also be applied to equality data collection.

Similarly, the Statistical Office<sup>889</sup> follows its general guidelines, rules and good practices when collecting all kinds of data, including equality data, but does not have any specific rules, guidelines or good practices specifically concerning equality data.

<sup>884</sup> The Access to Public Information Act, published on 22 March 2003 (Official Gazette of RS, No. 24/2003) with changes and amendments (latest change: Official Gazette of RS, No. 19/15, Decision of Constitutional Court of Slovenia) governs the procedure which ensures everyone free access to and use of public information held by state bodies, local government bodies, public agencies, public funds and other entities of public law, holders of public powers and public service contractors.

<sup>885</sup> See [www.stat.si/StatWeb/glavnanavigacija/podatki/povprasevanje/povpra%C5%A1evanje-po-podatkih](http://www.stat.si/StatWeb/glavnanavigacija/podatki/povprasevanje/povpra%C5%A1evanje-po-podatkih) and [www.policija.si/index.php/informacije-javnega-znaaja/postopek-za-dostop-do-izj](http://www.policija.si/index.php/informacije-javnega-znaaja/postopek-za-dostop-do-izj).

<sup>886</sup> See [www.mnz.gov.si/si/mnz\\_za\\_vas/osebni\\_in\\_tajni\\_podatki/osebni\\_podatki\\_iz\\_crp/#c17492](http://www.mnz.gov.si/si/mnz_za_vas/osebni_in_tajni_podatki/osebni_podatki_iz_crp/#c17492).

<sup>887</sup> Slovenia, Law amending the Equalisation of Opportunities for Persons with Disabilities Act (*Zakon o spremembah in dopolnitvah Zakona o izenačevanju možnosti invalidov*) (Uradni list RS, št. 50/14), [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO6952](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO6952).

<sup>888</sup> [www.ip-rs.si/](http://www.ip-rs.si/).

<sup>889</sup> [www.stat.si/statweb](http://www.stat.si/statweb).

Equality data in Slovenia are usually made accessible to the public, in strict accordance with the aforementioned Article 13 of the Personal Data Protection Act. Institutions may apply charges to prepare the requested data or grant access.

## 2. Definitions and categories used to collect equality data

The Census in 2002<sup>890</sup> was the last one to collect data on ethnicity: the category used was "*narodnost*", which is usually translated into English as "ethnicity", but in Slovenian has a wider meaning than simply "*etničnost*" (ethnicity) and comprises some elements of what would be called "nationality" in English (but without the implication of citizenship). The Census conceptualised "*narodnost*" as: Serbs, Macedonians, Croats, Montenegrins, Bosniaks, Albanians, Roma, etc.

The residence application form, where data on ethnic affiliation are still collected on a voluntary basis, simply asks for "*narodnost*" and the applicant fills the space if and as he/she sees fit.

The ESS Survey (*Evropska družboslovna raziskava*)<sup>891</sup> and Eurobarometer use self-declared ethnic affiliation, whereas the ESS Survey also uses language spoken (up to two) as a proxy.

A significant challenge is the collection of data on Roma. Schools, for example, need to report the number of Roma pupils enrolled in their establishment for administrative purposes.<sup>892</sup> However, in accordance with the existing legislation, schools can neither make a third-party categorisation, nor can they ask pupils (or their parents, for that matter) about their ethnic affiliation. The Information Commissioner in these cases encourages institutions to make an educated guess (third-party categorisation). Most data on Roma which are collected for administrative purposes (and are needed for some kind of special arrangements or affirmative action) are gathered in this way.

If they want to take advantage of their double voting right,<sup>893</sup> members of the Italian, Hungarian and Roma communities in Slovenia must be listed in special voting lists.<sup>894</sup> Registration on such lists is made through self-declaration/self-registration by the applicant and, according to the law, such registration should be revised by a commission. However, in practice, it is not revised, because criteria for determining who can be on the list and who cannot have never been developed.

The Census in 2002 was also the last one where data on religious affiliation were collected (e.g. Roman Catholics, Muslims, followers of the Orthodox Church, Evangelical Church, agnostics, atheists, etc.). In the ESS survey people declares themselves as belonging to a religion and/or as part of a group that is discriminated on grounds of religion. In the Eurobarometer respondents can declare themselves as being part of a religious minority.

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<sup>890</sup> Census of Population, households and housing, Slovenia, 31 March 2002, [www.stat.si/popis2002/en/default.htm](http://www.stat.si/popis2002/en/default.htm).

<sup>891</sup> [www.europeansocialsurvey.org/data/country.html?c=slovenia](http://www.europeansocialsurvey.org/data/country.html?c=slovenia), [www.europeansocialsurvey.org/about/country/slovenia/ess\\_slovenia.html](http://www.europeansocialsurvey.org/about/country/slovenia/ess_slovenia.html), [www.stat.si/publikacije/pub\\_popisne\\_prva.asp](http://www.stat.si/publikacije/pub_popisne_prva.asp).

<sup>892</sup> Schools which have Roma pupils can have additional teachers to help Roma pupils.

<sup>893</sup> Slovenia, National Assembly Elections Act (*Zakon o volitvah v državni zbor*) (*Uradni list RS*, št. 109/06 – uradno prečiščeno besedilo in 54/07 – odl. US), Article 2; Local elections Act (*Zakon o lokalnih volitvah*) (*Uradni list RS*, št. 94/07 – uradno prečiščeno besedilo, 45/08 in 83/12), Article 6.7.

<sup>894</sup> See also Slovenia, Voting Rights Register Act (*Zakon o evidenci volilne pravice*) (*Uradni list RS*, št. 46/92) (ZEVP), 22. čl.).

An individual's gender identity is ascribed at birth. The legal process of changing gender identity includes a psychiatric diagnosis of a mental disorder and then the change can be made in the Register of Births, Marriages and Deaths.<sup>895</sup>

In the field of LGBT the only category used is the Registered Same-Sex Partnership, in accordance with the Registration of Same-Sex Civil Partnerships Act.<sup>896</sup>

Data on disabled people can be obtained from different sources in Slovenia and aggregated in different ways (such as, for example, the number of people receiving disability benefits, the number of people employed as disabled, etc.). Data on the situation of disabled people with motor problems can be obtained from the EU-SILC survey.<sup>897</sup>

### 3. Practical implementation

The Statistical Office of Slovenia carries out special surveys which may touch upon one or more grounds of discrimination, but most of these surveys are not conceived as ongoing monitoring, and none of them deal with discrimination, although some assumptions can be made about discrimination by using data such as income, employment, profession, etc. Among the international statistical surveys conducted in Slovenia by the Statistical Office,<sup>898</sup> EU-SILC (*Življenjski pogoji*)<sup>899</sup> is the one that provides most such data and insight.

National authorities do not collect data on gender identity or religion and only partial data on ethnic affiliation.

The ground of gender identity had not been recognised until recently in Slovenia and, apart from the process for changing (ascribed) gender in the Register of Births, Marriages and Deaths, there are no relevant data on gender identity. In the Eurobarometer Survey it is possible for respondents to identify themselves as discriminated against on grounds of sexuality.

The last census in which data on ethnic affiliation were comprehensively collected was carried out in 1991 (*Popis prebivalstva 1991*).<sup>900</sup> In 2002 (*Popis prebivalstva 2002*)<sup>901</sup> such data were gathered with a different methodology on a voluntary basis and were not comparable with data collected in previous censuses. Since 2002, censuses have been carried out by compiling data already available in different national registers. No data on ethnic or racial affiliation and belief or religion are available in national registers. The only data on ethnic affiliation are collected on a voluntary basis on residence application forms and according to the opinion of the Statistical Office. Thus such data are too limited and not representative. According to the Statistical Office, the trend on data collection in the field of ethnicity has moved from ethnic affiliation to country of origin and parents' country of origin. These data are collected in the LFS (*Anketa od delovni sili*)<sup>902</sup> and EU-SILC surveys.<sup>903</sup> The only available data on discrimination on ethnic grounds are those provided by public opinion surveys, such as Eurobarometer or the ESS

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<sup>895</sup> Slovenia, Registers Act (consolidated text) (*Zakon o matičnih knjigah (prečiščeno besedilo)*) (Uradni list SRŠ, št. 2/87), [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1450](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1450).

<sup>896</sup> Slovenia, Registration of Same-sex Civil Partnerships Act (*Zakon o registraciji istospolne partnerske skupnosti*) (Uradni list RS, št. 65/05 in 55/09 – odl. US), [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4335](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4335).

<sup>897</sup> [http://pxweb.stat.si/pxweb/Databse/Dem\\_soc/Dem\\_soc.asp#05](http://pxweb.stat.si/pxweb/Databse/Dem_soc/Dem_soc.asp#05).

<sup>898</sup> [www.stat.si/statweb](http://www.stat.si/statweb).

<sup>899</sup> [www.stat.si/StatWeb/Common/PrikaziDokument.ashx?IdDatoteke=8291](http://www.stat.si/StatWeb/Common/PrikaziDokument.ashx?IdDatoteke=8291).

<sup>900</sup> [www.stat.si/publikacije/pub\\_popisne\\_prva.asp](http://www.stat.si/publikacije/pub_popisne_prva.asp).

<sup>901</sup> [www.stat.si/publikacije/pub\\_popisne\\_prva.asp](http://www.stat.si/publikacije/pub_popisne_prva.asp).

<sup>902</sup> [http://pxweb.stat.si/pxweb/Dialog/viewplus.asp?ma=H261S&ti=&path=../Database/Hitre\\_Repozitorij/&lang=2](http://pxweb.stat.si/pxweb/Dialog/viewplus.asp?ma=H261S&ti=&path=../Database/Hitre_Repozitorij/&lang=2).

<sup>903</sup> [http://pxweb.stat.si/pxweb/Databse/Dem\\_soc/Dem\\_soc.asp#05](http://pxweb.stat.si/pxweb/Databse/Dem_soc/Dem_soc.asp#05).

Surveys (*Evropska družboslovna raziskava*)<sup>904</sup> and specific surveys/studies carried out by research institutions.<sup>905</sup>

The same applies to religion. Data on religious affiliation are collected in the ESS and Eurobarometer Surveys.

Besides the data on the number of registered same-sex partnerships from the Register of Births, Marriages and Deaths, there are no other official (statistical) data on LGBT groups in Slovenia. The EU-SILC survey includes data on registered same-sex partnerships, but these are included in the same categories as other partnerships. Since their number is very limited (approx. 200), the Statistical Office, in order to preserve the anonymity of individuals, decided to include self-declared homosexual individuals in the categories of married (for those who have registered same-sex partnerships), widowed (for those whose registered same-sex partner has died) and possibly single. In the ESS Survey LGBT people can identify themselves as discriminated against on the grounds of sexuality (which also includes gender identity), whereas in the Eurobarometer they can identify themselves as members of other minorities. LGBT NGOs have well-established channels for collecting grievances and helping victims of discrimination, so they have a good insight into the situation of LGBT people in Slovenia.<sup>906</sup>

Data on disabled people can be obtained from different sources in Slovenia and aggregated (such as, for example, the number of people receiving disability benefits, the number of disabled people in employment, etc.). Some data on the situation of disabled people (motor problems) can be obtained from the EU-SILC survey, whereas the 2012-2013 EHIS survey (*Anketa o zdravju in zdravstvenem varstvu*)<sup>907</sup>, carried out by the National Institute for Public Health in cooperation with the Statistical Office and the 2014 EHSIS survey (*Anketa o zdravju in socialni vključenosti*)<sup>908</sup> do not collect data on discrimination. However, they do provide an insight into the life of people with disabilities, especially the obstacles they encounter in terms of their mobility (2014 EHSIS survey) and their inclusion/exclusion from public life due to their disability (2012-2013 EHIS survey).

There are no non-legislative or policy measures pertaining specifically to equality data collection in Slovenia (beside the legal framework that has been mentioned already).

Courts do not keep records on equality data.

The police keep records of the type of criminal offences committed, as listed in the Criminal Code, and motives for such offences. From the police data, by means of careful research that ensures the anonymity of individuals is maintained, some data about criminal offences related to LGBT may be obtained. Some assumptions can also be made on the basis of the yearly police reports. For example, the frequency of certain crimes on the territory of Slovenia could be compared with the location of Roma settlements and some conclusions can be drawn on the correlation of Roma settlements with certain types of crimes. However, the police cannot identify a person by ethnic affiliation or sexual orientation (unless the victim or perpetrator freely provides such information), so even for hate crimes, it is impossible to know who (in terms of ethnic identity) was the

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<sup>904</sup> [www.europeansocialsurvey.org/about/country/slovenia/index.html](http://www.europeansocialsurvey.org/about/country/slovenia/index.html).

<sup>905</sup> See, for example, Komac, Miran, ed. (2007) *Priseljenci* [Immigrants. Studies of immigration and inclusion in Slovenian society]. Institute for Ethnic Studies, Ljubljana; Medvešek Mojca and Romana Bešter, ed. (2010) *Državljeni tretjih držav ali tretje razredni državljani* [Third-country immigrants or third rate citizens?], [www.dlib.si/details/URN:NBN:SI:DOC-PUFPPYGT](http://www.dlib.si/details/URN:NBN:SI:DOC-PUFPPYGT).

<sup>906</sup> See [www.legebitra.si/](http://www.legebitra.si/), <http://www.dih.si/>, <http://www.mavricni-forum.net/index.php?/topic/2912-lgbt-povezave/>.

<sup>907</sup> [www.stat.si/StatWeb/glavnanavigacija/podatki/koledar-objav/koledar-objav-podrobnosti?id=17520](http://www.stat.si/StatWeb/glavnanavigacija/podatki/koledar-objav/koledar-objav-podrobnosti?id=17520) or See <http://www.nijz.si/sl/podatki/anketa-o-zdravju-in-zdravstvenem-varstvu>.

<sup>908</sup> [www.stat.si/StatWeb/doc/sosvet/Sosvet\\_26/Sos26\\_s1652-2011.ppt](http://www.stat.si/StatWeb/doc/sosvet/Sosvet_26/Sos26_s1652-2011.ppt).

perpetrator and who the victim. Therefore, even when the statistical data are known, it is difficult to interpret what they mean.

#### **4. Key issues**

According to the views expressed by the Advocate of the Principle of Equality, most data on equality in Slovenia are collected when and if this is required by external actors (such as EU institutions) and not as part of a routine (monitoring) process. The existing legal framework allows the collection of such data, but domestic authorities frequently do not have the need to collect such data (no policies or action plans are being developed based on such data), nor is there a clearly stated legal duty to do so.

Complaints about lack of data, lack of disaggregated data or limited implementation of the stated policy are a "leitmotiv" in most opinions/reports/recommendations by international institutions, whereas domestic authorities are much more concerned about abiding by the limitations on personal data collection rather than about the lack of equality data. The absence of data gives a general impression that discrimination is not an issue in Slovenia, although studies have repeatedly shown that this is not the case.

Finally, the collection of equality data on Roma in accordance with the advice of the Information Commissioner raises important questions. If data on the number of Roma are needed in order to implement (affirmative action) policies, is an educated guess by the relevant authority really the best solution? Does this mean that the effects of those affirmative action policies can never be measured – at least not without an educated guess of the same (relevant) authority? How is an educated guess better than or different from a subtle third-party categorisation?

A new proposal for the amended Implementation of the Principle of Equal Treatment Act is currently being discussed in Slovenia. The current proposal (the third) states that the competent national authorities collect data and keep records on all cases of reported discrimination or discrimination about which they have knowledge in their work (Article 16). However, it is too soon to determine whether the proposal will be adopted and, if so, in what form.



## 26. Spain

**Expert: José Manuel Fresno and Cornelia Rauchberger**

### 1. Relevant legal framework

Spain currently has no specific legal provision on equality data and the domestic legal framework for data collection<sup>909</sup> sets out no obligations or methodologies for their collection. Nonetheless, there is a strong demand for the collection of equality data related to persons with disabilities in employment, since the legal framework obliges companies with over 50 staff members to employ a minimum of 2% of people with disabilities.<sup>910</sup> This effectively places an obligation on such companies to collect equality data on the number of employees with disabilities so as to ensure that they comply with this legal obligation. A legal framework regulating rectifications to the Spanish Civil Register establishes that data may now be collected on individuals who have been granted permission to change their "gender or sex" in the register, however, such data may only be published with special permission from the rectification registry<sup>911</sup> and to date no such data has been published. There is no legal requirement for the collection of equality data on racial or ethnic origin in Spain, however, the Spanish Council for the Promotion of Equal Treatment and Non-Discrimination on Racial or Ethnic Origin has the power to 'conduct studies and publish reports on discrimination of people on the grounds of racial or ethnic origin'.<sup>912</sup>

Though the legal framework for data protection does not demand the collection of equality data, it does set out certain prohibitions. It stipulates that no-one may be compelled to testify about his/her ideology, religion or belief which implies that in order to legally collect such data there is a duty to obtain the express written consent of the data subjects, who must be notified of their right not to reveal this information.<sup>913</sup> There is also a protective regime for other grounds, in conformity with Article 8.1 of Directive 95/46/EC, for sensitive personal data such as "racial or ethnic origin", "health" and "sexual life", which are forbidden from being processed 'for the sole purpose of storing personal data'.<sup>914</sup> In other circumstances, their collection is prohibited unless it is considered to be in the general interest and the law so provides or the individual concerned gives explicit, informed consent.<sup>915</sup> However, collection of personal data is still possible under certain exemptions, as provided by Articles 7.6 and 8 of the law, mirroring some but not all of those allowed by Article 8.2 of Directive 95/46/EC.

| Consent | Employee | Health/lif | Public | Members | Legal | Medicine | Public interest – Other   |
|---------|----------|------------|--------|---------|-------|----------|---|
| X       | X        | X          | X      | X       | X     | X        | Article 7.2 'for reasons of general interest, as the law so provides' |

<sup>909</sup> Spain, Personal Data Protection Act (*Ley Orgánica de Protección de Datos de Carácter Personal* 15/1999, 13 December 1999. Articles 7.1 and 7.2. [www.boe.es/buscar/act.php?id=BOE-A-1999-23750](http://www.boe.es/buscar/act.php?id=BOE-A-1999-23750).

<sup>910</sup> Spain, General Law on Persons with Disabilities and their Social Inclusion (*Ley General de derechos de las personas con discapacidad y de su inclusión social*, 1/2013, 29 November 2013, Article 42.1. [www.boe.es/diario\\_boe/txt.php?id=BOE-A-2013-12632](http://www.boe.es/diario_boe/txt.php?id=BOE-A-2013-12632).

<sup>911</sup> Spain, Law on the Rectification of the Registration of Sex (*Ley reguladora de la rectificación registral de la mención relativa al sexo de las personas*) 3/2007, 15 March 2007, Articles 4, 6 and 7. [www.boe.es/diario\\_boe/txt.php?id=BOE-A-2007-5585](http://www.boe.es/diario_boe/txt.php?id=BOE-A-2007-5585).

<sup>912</sup> Spain, Fiscal, Administrative and Social Order Measures Act (*Ley de medidas fiscales, administrativas y del orden social*) 62/2003, 30 December 2003, Article 33.2.b. [www.igualdadynodiscriminacion.msssi.es/tusDerechos/legislacion/estatal/pdf/ley62\\_2003.pdf](http://www.igualdadynodiscriminacion.msssi.es/tusDerechos/legislacion/estatal/pdf/ley62_2003.pdf).

<sup>913</sup> Spain, Personal Data Protection Act, 1999, Article 7.2.

<sup>914</sup> Spain, Personal Data Protection Act, 1999, Article 7.3.

<sup>915</sup> Spain, Personal Data Protection Act, 1999, Articles 7.4 and 3.h.

## 2. Definitions and categories used to collect equality data

Due to the lack of systematic national equality data collection, there are few definitions and categories in national law to this end.

*Disability:* disability is defined as: 'a situation resulting from the interaction between persons with foreseeably permanent impairments and any kind of barriers that limit or prevent their full and effective participation in society on an equal basis with others'.<sup>916</sup> People with disabilities are able to obtain an official Certificate of Disability (*Certificado de discapacidad*) which recognises their "degree of disability" in order to obtain certain social benefits. This categorisation is based first on self-identification of disability (physical, intellectual, mental illness or sensory),<sup>917</sup> and then third-party categorisation by way of an evaluation on the degree of disability by medical professionals, psychologists and social workers: measuring the degree of disability as a percentage.<sup>918</sup> Such assessments are based on detailed scales regarding both the disabilities presented by the person as well as any social factors which may hinder their social integration.<sup>919</sup> In the 2008 survey on Disability, Personal Autonomy and Situations of Dependence, the Spanish National Statistics Institute collected data in order to estimate the number of people with a disability and the types of disability.<sup>920</sup> For the purposes of the survey, the 'impairments of people aged six years or over' were categorised as follows: mental impairments; visual impairments; hearing impairments; language, speech and voice impairments; nervous system impairments; visceral impairments; other impairments (skin, multiple, not classified).<sup>921</sup>

*Ethnic or racial origin:* the lack of legislation on the collection of data on ethnic and racial origin entails a lack of categories and definitions to this end. In the case of immigrants, there is auto-hetero identification in the provision of data on "country of origin" in the application for the Foreign Identification Number (*Numero de Identidad Extranjero*). In the case of Roma, in the exceptional cases where they are recorded in administrative registers (minimum income in some regions and students in some schools),<sup>922</sup> in some cases it is auto-hetero identification and in other cases it is self-determination.

*Sexual orientation and gender identity:* as far as gender identity is concerned, the National Census collects data on biological "sex", as registered in the Civil Registry:<sup>923</sup> only distinguishing between "male" and "female"<sup>924</sup> and not taking intersex people into account. Gender identity data are also collected based on self-identification, for instance, as mentioned above, an individual may request to have their sex officially changed in the Civil Register,<sup>925</sup> though these categories are again limited to male and female. An

<sup>916</sup> Spain, General Law on Persons with Disabilities and their Social Inclusion, 2013. Article 2.a.

<sup>917</sup> See for example, see Community of Madrid, *Solicitud de Reconocimiento de Grado de Discapacidad* [Application for recognition of the degree of disability] B.O.C.M núm 87, 15 April 2015, page 70 [http://w3.bocm.es/boletin/CM\\_Orden\\_BOCM/2015/04/14/BOCM-20150414-13.PDF](http://w3.bocm.es/boletin/CM_Orden_BOCM/2015/04/14/BOCM-20150414-13.PDF).

<sup>918</sup> Spain, Royal decree on the Procedure for the recognition, declaration and qualification of the degree of disability (*Procedimiento para el reconocimiento, declaración y calificación del grado de minusvalía*) 1971/1999, 23 December 1999. Aretivle 4.1. [www.boe.es/diario\\_boe/txt.php?id=BOE-A-2000-1546](http://www.boe.es/diario_boe/txt.php?id=BOE-A-2000-1546).

<sup>919</sup> Spain, Royal decree on the Procedure for the recognition, declaration and qualification of the degree of disability. Annexes 1 and 2 and Articles 4.1, 5.1 and 5.2.

<sup>920</sup> See National Statistics Institute (INE), *Encuesta de discapacidad, autonomía personal y situaciones de dependencia* [Study of disability, personal autonomy and situations of dependence], 2008. [www.ine.es/daco/daco42/discapa/edad\\_dis.pdf](http://www.ine.es/daco/daco42/discapa/edad_dis.pdf).

<sup>921</sup> For a further breakdown of these classifications, as well as their definitions, see: Spanish National Statistics Institute (2008) *Tarjeta TDA: Clasificación de Deficiencias de personas de 6 años o más*, EDAD07-TDA. [www.ine.es/daco/daco42/discapa/clasi07a.pdf](http://www.ine.es/daco/daco42/discapa/clasi07a.pdf).

<sup>922</sup> See more details on this below.

<sup>923</sup> INE (2011) *Censo de Población y Viviendas* [www.ine.es/censos2011\\_datos/cen11\\_datos\\_inicio.htm](http://www.ine.es/censos2011_datos/cen11_datos_inicio.htm).

<sup>924</sup> INE, *Nomenclátor: Población del Padrón Continuo por Unidad Poblacional* [www.ine.es/dynt3/metadatos/es/RespuestaDatos.htm?oe=30261](http://www.ine.es/dynt3/metadatos/es/RespuestaDatos.htm?oe=30261).

<sup>925</sup> See Law of Registration of Rectification of Sex (*Ley reguladora de la rectificación registral de la mención relativa al sexo de las personas*) 3/2007, 15 March 2007, Articles 4-7. [www.boe.es/diario\\_boe/txt.php?id=BOE-A-2007-5585](http://www.boe.es/diario_boe/txt.php?id=BOE-A-2007-5585).

example of self-identification of both gender identity and sexual orientation exists in the 2013 study by the State Federation of Lesbians, Gays and Transsexuals (FELGTB) on hate crimes and sexual orientation/gender identity.<sup>926</sup> The study managed by this NGO was based on collected data on sexual orientation, with the categories: gay; lesbian; bisexual; heterosexual; pansexual; and not sure. The survey was also based on data on the gender identity of the respondents with a wider set of categories: man; woman; transsexual man; transsexual woman; transgendered; intersex.

*Age:* data on age are collected in almost all national surveys and can be obtained from national identity documents (DNI) or birth certificates, yet there is no specific definition.

*Multiple grounds:* equality data on discrimination based on multiple grounds are only collected in the cases of victims of discrimination who go to specialised services and formulate complaints.

### 3. Practical implementation

*National Statistics Offices:* the National Statistics Institute in Spain (INE) has the mandate to collect statistics in Spain but not to stimulate/monitor/prevent the collection of equality data, and it currently does not collect data related to equality or discrimination except in the area of disability.<sup>927</sup> The major national surveys conducted by the INE, such as the Population and Housing Census,<sup>928</sup> the Labour Force Survey (LFS)<sup>929</sup> and the Statistics on Income and Living Conditions survey (EU-SILC),<sup>930</sup> as well as the Spanish Ministry of Health, Social Services and Equality's National Health Enquiry, collect data disaggregated by sex, age, nationality and disability but not by other grounds. As far as data on ethnic/racial backgrounds are concerned, these surveys collect data on nationality, with only the Population and Housing Census collecting data on country of birth.<sup>931</sup> The purpose of these statistics is to provide information for public access. The section on discrimination of the Survey on Social Integration and Health 2012 collected data on the types of discrimination faced by respondents, including: age; sex; ethnicity; illness or chronic health issues; religion; sexual orientation; none of the above; and don't know. However, this survey did not go on to request further data on these particular categories of discrimination.<sup>932</sup> Data were collected by a stratified sampling of 14,000 representative households at national and regional level through both internet-based questions and direct interviews with those who agreed to them.

Each Spanish autonomous community has its own piece of legislation which establishes that the regional government of each community will have exclusive competence in the

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<sup>926</sup> Federación Estatal de Lesbianas, Gais, Transexuales y Bisexuales (2013), *Hate crimes and sexual orientation/gender identity in Spain, Documenting homophobic and transphobic violence*, ILGA-EUROPE. [www.ilga-europe.org/sites/default/files/Attachments/spain.pdf](http://www.ilga-europe.org/sites/default/files/Attachments/spain.pdf) (English version).

<sup>927</sup> See INE (2008), *Encuesta de discapacidad, autonomía personal y situaciones de dependencia* [Disability, personal autonomy and dependence situations survey]. [www.ine.es/daco/daco42/discapa/edad\\_dis.pdf](http://www.ine.es/daco/daco42/discapa/edad_dis.pdf); Annual statistics on the employment of persons with disabilities; and *Estadística del salario de las personas con discapacidad* [Annual statistics on the salaries of persons with disabilities] [www.ine.es/dyngs/IOE/en/operacion.htm?id=1259941118497](http://www.ine.es/dyngs/IOE/en/operacion.htm?id=1259941118497).

<sup>928</sup> Conducted every 10 years, the last one being in 2011. INE (2011), *Censo de Población y Viviendas* [www.ine.es/censos2011\\_datos/cen11\\_datos\\_inicio.htm](http://www.ine.es/censos2011_datos/cen11_datos_inicio.htm).

<sup>929</sup> INE (2015), *Encuesta de población activa* (Trimester 3/2015), [www.ine.es/dyngs/INEbase/es/operacion.htm?c=Estadistica\\_C&cid=1254736176918&menu=ultiDatos&idp=1254735976595](http://www.ine.es/dyngs/INEbase/es/operacion.htm?c=Estadistica_C&cid=1254736176918&menu=ultiDatos&idp=1254735976595).

<sup>930</sup> INE (2014) *Encuesta de condiciones de vida*. [www.ine.es/dyngs/INEbase/es/operacion.htm?c=Estadistica\\_C&cid=1254736176807&menu=ultiDatos&idp=1254735976608](http://www.ine.es/dyngs/INEbase/es/operacion.htm?c=Estadistica_C&cid=1254736176807&menu=ultiDatos&idp=1254735976608).

<sup>931</sup> See INE (2001), *Censo de Población y Viviendas* [www.ine.es/censos2011/censos2011\\_cuestionario.pdf](http://www.ine.es/censos2011/censos2011_cuestionario.pdf).

<sup>932</sup> INE (2012), *Encuesta de integración social y salud* [Survey on social integration and health]. <http://www.ine.es/metodologia/t15/t1530470cues12.pdf>.

area of data collection for the purposes of their autonomous community.<sup>933</sup> Consequently, the autonomous communities share the same data collection competences as the INE for their region. The level of development of equality data collection in the different Spanish regions thus depends on the different regional administrations.

*Administrative registers:* administrative registers collect data on the beneficiaries of the services but they do not include equality data as such; although in most cases they break down information by age, nationality and disability but not by other grounds. Other fields, such as education, employment, healthcare and social housing services are under the competence of the regions and, consequently, the regions collect their own data. In the area of education there exist exceptional cases, where some schools with high concentrations of Roma students, register their numbers, with the initiative being taken by each individual school with the purpose of monitoring the educational progress of these students. Some regions also register the number of Roma who receive the Minimum Income (RGI).<sup>934</sup> Data related to other kinds of economic benefits (i.e. unemployment benefits, pensions or other non-contributory pensions) are collected in the National Register of Benefits (*Registro Nacional de Prestaciones*) but the information is limited and can only be broken down by age, nationality and disability.

*Equality and related bodies:* the Council for the Promotion of Equal Treatment and Non-Discrimination on the grounds of Racial or Ethnic Origin has a mandate to monitor discrimination in the areas of ethnic and racial origin by data collection, analysis and reporting.<sup>935</sup> Unfortunately, due to internal changes, its monitoring activities in this regard have been reduced to a mere three publications since 2011. It published two studies 2011 and 2013 for the Panel on Discrimination, which focused on the perception of discrimination by potential victims,<sup>936</sup> and one report in 2012 focusing on such discrimination in the area of employment.<sup>937</sup> The reports were based on information provided by the census and the method was direct face to face interviews. The Spanish Government's Observatory on Racism and Xenophobia (OBERAXE) has produced annual reports on the situation of racism and xenophobia based on the annual survey it developed together with the Spanish Sociological Research Centre (CIS),<sup>938</sup> following classical sociological approaches and asking for the opinions of society on diverse groups. The *Annual report on the evolution of hate crime in Spain* by the Ministry of the Interior<sup>939</sup> is published and publicly accessible on the website, although individual cases

<sup>933</sup> INE, *La estadística de las CCAA*.

[www.ine.es/ss/Satellite?L=es\\_ES&c=Page&cid=1254735904941&p=1254735904941&pagename=INE%2F%2FNELayout#](http://www.ine.es/ss/Satellite?L=es_ES&c=Page&cid=1254735904941&p=1254735904941&pagename=INE%2F%2FNELayout#)

<sup>934</sup> In the cases of The Balears, Cantabria, Castilla-la Mancha, Galicia, Murcia and Navarra. See Spanish Ministry of Health, Social Services and Equality (2014), *Informe de Rentas Mínimas de Inserción (Report on minimum insertion income)* Page 59

[www.msssi.gob.es/ssi/familiasInfancia/inclusionSocial/serviciosSociales/RentasMinimas/Docs/InformeRMI2014.pdf](http://www.msssi.gob.es/ssi/familiasInfancia/inclusionSocial/serviciosSociales/RentasMinimas/Docs/InformeRMI2014.pdf)

<sup>935</sup> See Consejo para la Promoción de la Igualdad de Trato y No Discriminación de las Personas por el Origen Racial o Étnico website: <http://www.igualdadynodiscriminacion.msssi.es/home.do>

<sup>936</sup> Consejo para la Promoción de la Igualdad de Trato y No Discriminación de las Personas por el Origen Racial o Étnico (2011), *Informe sobre discriminación por origen racial o étnico: la percepción de potenciales víctimas (Annual study on discrimination on racial or ethnic origin: the perception of potential victims)*

[http://www.msssi.gob.es/ssi/igualdadOportunidades/noDiscriminacion/documentos/panel\\_discrimi\\_2011.pdf](http://www.msssi.gob.es/ssi/igualdadOportunidades/noDiscriminacion/documentos/panel_discrimi_2011.pdf) f and (2010), *Panel sobre discriminación por origen racial o étnico: la percepción de las potenciales víctimas (Panel on discrimination on racial or ethnic origin: the perception of potential victims)*. [http://www.contraladiscriminacion.com/wp-content/uploads/2011/03/2010\\_Panel\\_discriminacion\\_consejo.pdf](http://www.contraladiscriminacion.com/wp-content/uploads/2011/03/2010_Panel_discriminacion_consejo.pdf)

<sup>937</sup> Consejo para la Promoción de la Igualdad de Trato y No Discriminación de las Personas por el Origen Racial o Étnico (2013), *Monografía sobre la percepción que tienen las minorías étnicas del nivel de discriminación existente en el ámbito del empleo y la formación. (Monograph on the perception of ethnic minorities on the level of discrimination in respect of employment and training)*

[http://www.igualdadynodiscriminacion.msssi.es/recursos/publicaciones/2013/monografia\\_empleo.htm](http://www.igualdadynodiscriminacion.msssi.es/recursos/publicaciones/2013/monografia_empleo.htm) [https://explotacion.mtin.gob.es/oberaxe/inicio\\_descargaFichero?bibliotecaDatoId=4069](https://explotacion.mtin.gob.es/oberaxe/inicio_descargaFichero?bibliotecaDatoId=4069)

<sup>939</sup> Spanish Ministry of the Interior (2014), *Informe sobre incidentes relacionados con los delitos de odio en España* [Report on incidences related to hate crime in Spain],

are only accessible by staff of the Ministry of the Interior. In addition, the annual reports of the Office for Support for People with Disability<sup>940</sup> also publish such data on their websites and present them to both the media<sup>941</sup> and stakeholders for the purpose of transparency, public awareness and encouraging victims to complain when they feel discredited.

**NGOs:** NGOs in Spain collect equality data for the purposes of awareness-raising, monitoring and providing support to victims of discrimination. As well as the FELGTB reports on sexual orientation and gender identity mentioned in the previous section, the Network of Centres for Supporting the Victims of Discrimination on Grounds of Ethnic and Racial Origin<sup>942</sup> published annual reports with official results and data in 2010 and 2011,<sup>943</sup> which were publicly available, although only the NGOs supporting the victims of the Network. Unfortunately, since the 2010 and 2011 annual reports no more have been produced. Another relevant example is the Fundación Secretariado Gitano, which has produced annual reports on “discrimination and the Roma community” for ten years and has registered 1,073 cases. Its approach is comprehensive, as it reports the cases and also undertake awareness-raising work, mediation, capacity-building of Roma leaders and also litigation.<sup>944</sup> The Spanish Federation SOS Racismo, with delegations in various Autonomous Communities, provides important data on the situation of racism in the Spanish regions, which is published in its annual report.<sup>945</sup>

#### 4. Key issues

Spain still lacks the legal framework for equality data collection to allow equality to be measured. There is a need for a better and clearer legal framework. According to the Ministry of Health, Social Services and Equality, ‘among the scarcely studied grounds of discrimination we find sexual orientation, gender identity and religion or belief. The analyses of these grounds only cover partial aspects and have been conducted mostly by private entities who represent the interests of the different groups of potential victims of discrimination’.<sup>946</sup> The only existing equality body, attached to the Ministry of Health, Social Services and Equality, is focused on racial and ethnic origin and its limited resources, financial and human, limit its capacity to collect equality data.

The comparability of the data which are available is limited for several reasons: firstly, Spain’s decentralisation tends to impede harmonised data collection; secondly, when there is data collection, it lacks continuity which makes it difficult to analyse progress over a period of time. Within the existing information, the reliability of the data is weak, as the methods and systems for collecting data follow different patterns; the lack of tradition and continuity and the poor resources available weaken the quality of the data.

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[www.interior.gob.es/documents/10180/1643559/Estudio+Incidentes+Delitos+de+Odio+2014.pdf/70073437-795d-4ce1-acfc-ed92b02cf1a6](http://www.interior.gob.es/documents/10180/1643559/Estudio+Incidentes+Delitos+de+Odio+2014.pdf/70073437-795d-4ce1-acfc-ed92b02cf1a6) and (2013), *Informe sobre la evolución de los delitos de odio en España*. [Report on the evolution of hate crime in Spain],

[http://explotacion.mtin.gob.es/oberaxe/documentacion\\_descargaFichero?bibliotecaDatoId=4063](http://explotacion.mtin.gob.es/oberaxe/documentacion_descargaFichero?bibliotecaDatoId=4063).

<sup>940</sup> Spanish Ministry of Health, Social Services and Equality, Office for Support for People with disability (2014) *Informe anual* [Annual report] 2014.

[www.oadis.msssi.gob.es/informesOPE/Ano2014/pdf/INFORME\\_ANUAL\\_2014.pdf](http://www.oadis.msssi.gob.es/informesOPE/Ano2014/pdf/INFORME_ANUAL_2014.pdf).

<sup>941</sup> See [www.interior.gob.es/prensa/noticias/-/asset\\_publisher/GHU8Ap6ztqsg/content/id/3712585](http://www.interior.gob.es/prensa/noticias/-/asset_publisher/GHU8Ap6ztqsg/content/id/3712585).

<sup>942</sup> *Red de Centros de Asistencia a Víctimas de Discriminación por Origen Racial o Étnico*: an NGO network supported by the equality body on racial and ethnic origin.

<sup>943</sup> Spanish Ministry of the Interior, Network of centres for supporting the victims of discrimination on the grounds of ethnic and racial origin (2012), *Informe anual de resultados* [Annual report of results] 2011, [www.igualdadynodiscriminacion.msssi.es/recursos/publicaciones/2012/documentos/2012\\_informe\\_red\\_11.pdf](http://www.igualdadynodiscriminacion.msssi.es/recursos/publicaciones/2012/documentos/2012_informe_red_11.pdf).

<sup>944</sup> Fundación Secretariado Gitano (2014), *Annual report on discrimination and the Roma Community*. (English) [www.gitanos.org/upload/83/83/Annual\\_Report\\_2014\\_-\\_Discrimination\\_and\\_the\\_Roma\\_community.pdf](http://www.gitanos.org/upload/83/83/Annual_Report_2014_-_Discrimination_and_the_Roma_community.pdf).

<sup>945</sup> Fresno, J. M. and Rode, R. (2009) *Network of Socio-Economic Experts in the Non-Discrimination Field. Country report 2. Spain*. Page 12

<sup>946</sup> Spanish Ministry of Health, Social Services and Equality (2013) *Diagnostic study of secondary sources about discrimination in Spain. Executive Summary*, Page 9. (English version) [www.msssi.gob.es/ssi/igualdadOportunidades/noDiscriminacion/documentos/resum\\_ingles\\_discrim.pdf](http://www.msssi.gob.es/ssi/igualdadOportunidades/noDiscriminacion/documentos/resum_ingles_discrim.pdf).



As regards the registration of cases of discrimination, it can be presumed that there is significant under-reporting, given the poor figures provided in the *Annual report on the evolution of hate crime in Spain* by the Ministry of the Interior, which reported only 1,285 cases in 2014.<sup>947</sup>

To date there have been no landmark cases specifically regarding equality data collection. However, the Spanish Agency for the Protection of Data heard a case where it upheld the protection of personal data on racial origin, holding that failing to obtain consent from the data subjects in the collection of such data<sup>948</sup> violated the laws protecting personal data and ordering the Health Service and Department of Education of Andalucía to adopt new internal measures to prevent future infringements. Another positive trend is the training and introduction of new processes and tools for the police forces on hate crime reporting,<sup>949</sup> as well as the introduction of the service of the Attorney General for hate crime, which have led to an increase in the collection of such data on discrimination throughout Spain.<sup>950</sup>

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<sup>947</sup> Spanish Ministry of the Interior (2013), *Informe sobre la evolución de los delitos de odio en España* [Report on the evolution of hate crime in Spain],

[http://explotacion.mtin.gob.es/oberaxe/documentacion\\_descargaFichero?bibliotecaDatoId=4063](http://explotacion.mtin.gob.es/oberaxe/documentacion_descargaFichero?bibliotecaDatoId=4063).

<sup>948</sup> Spanish Data Protection Agency (2006), *Resolución 00677 /2007, por DXXX & D.Y.Y.Y. al Servicio Andaluz de Salud y a la Consejería de Educación de la Junta de Andalucía*, N° AAPP/00095/2006.

[www.agpd.es/porta/webAGPD/resoluciones/admon\\_publicas/ap\\_2007/common/pdfs/AAPP-00095-2006\\_Resolucion-de-fecha-02-07-2007\\_Art-ii-culo-5-7.3-11-y-20-LOPD.pdf](http://www.agpd.es/porta/webAGPD/resoluciones/admon_publicas/ap_2007/common/pdfs/AAPP-00095-2006_Resolucion-de-fecha-02-07-2007_Art-ii-culo-5-7.3-11-y-20-LOPD.pdf).

<sup>949</sup> Spanish Ministry of the Interior (2013), *Informe sobre la evolución de los delitos de odio en España*. ().

[http://explotacion.mtin.gob.es/oberaxe/documentacion\\_descargaFichero?bibliotecaDatoId=4063](http://explotacion.mtin.gob.es/oberaxe/documentacion_descargaFichero?bibliotecaDatoId=4063).

<sup>950</sup> Fiscalía Provincial de Barcelona (2013), *Servicio de delitos de odio y discriminación de la fiscalía* [Report on services on hate crimes and discrimination]

<http://gestionpolicialdiversidad.org/PDFnoticias/memoria%202013%20servicio%20de%20delitos%20de%20odio%20y%20discriminaci%C3%B3n%20m%C3%A1s%20propuestas%20de%20reformas%20legislativas.pdf>.

## 27. Sweden

**Expert: Yamam Al-Zubaidi**

### 1. Relevant legal framework

There are no specific legal provisions governing the collection of equality data in Sweden. The Personal Data Act (PDA) is the main national legislation that regulates the processing of personal data.<sup>951</sup> The purpose of the Act is to protect against violations of personal integrity through the processing of personal data (Section 1). The Act defines processing as 'any operation or set of operations which is taken as regards personal data, whether or not it occurs by automatic means, for example collection, recording, organisation, storage, adaptation or alteration, retrieval, gathering, use, disclosure by transmission, dissemination or otherwise making information available, alignment or combination, blocking, erasure or destruction' (Section 3). Personal data are defined as 'all kinds of information that directly or indirectly may be referable to a natural person who is alive' (Section 3).

Directive 95/46/EC is implemented through DPA. In this respect, the structure of the Act in many ways resembles the structure of the Directive. Thus, Section 13 of the Act corresponds to Article 8.1 of the Directive, while Sections 14-20 indicate an ambition to reflect the exemptions in Article 8.2-8.4.

According to Section 13 of the PDA, processing data that reveal 'race or ethnic origin, political opinions, religious or philosophical beliefs, or membership of a trade union' as well as data that 'concern health or sex life' is prohibited. This kind of data is referred to as 'sensitive personal data'. Age seems to fall outside this category of data, whereas data on race or ethnic origin, religion or other belief, disability and sexual orientation are considered to be sensitive personal data. When it comes to data on transgender identity, they would be deemed to be sensitive personal data to the extent that they are defined as data concerning health.<sup>952</sup>

Sections 14-20 provide for a number of exemptions from the prohibition in Section 13. These sections seem to be formulated with the aim of reflecting the exemptions in Articles 8.2-8.4 in Directive 95/46 EC. Due to a lack of case law,<sup>953</sup> it is difficult to determine the scope of the exemptions in comparison with the text of the Directive. However, Section 19 seems to reflect the meaning of Article 8.4, at least partially. The Section has the title 'Research and Statistics', thus indicating a specific (thus narrow) interpretation of the wording of Article 8.4. Sentence two in Section 19 specifies the conditions for statistics; the wording refers to 'statistical projects'. According to the Data Protection Authority, this wording limits the exception to time-limited projects.<sup>954</sup> In

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<sup>951</sup> Sweden, Personal Data Act (1998:204) (*Personuppgiftslag*1998:204). Adopted on 29 April 1998, latest amendment is from 16 December 2010 (2010:1969). Full text in Swedish: [http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Personuppgiftslag-1998204\\_sfs-1998-204/?bet=1998:204](http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Personuppgiftslag-1998204_sfs-1998-204/?bet=1998:204).

<sup>952</sup> Gender identity as covered by the protection under EU law seems to be related mainly to gender reassignment. The ground protected under the Swedish Discrimination Act (2008:567) (*Diskrimineringslag*) is 'transgender identity or expression'. The protected ground is defined as: 'that someone does not identify herself or himself as a woman or a man or expresses by their manner of dressing or in some other way that they belong to another sex' (Chapter 1, Section 5, Sentence 2, Discrimination Act). According to the travaux préparatoires, the discrimination ground is intended to cover a broad range of sub-groups including transvestites and intersex people. It is stressed that the ground is to be interpreted broadly. To the extent that data about a given person (or group) can be interpreted as information revealing data on health, it would be considered to be sensitive personal data.

<sup>953</sup> Data Protection Authority (*Datainspektionen*), response 22 December 2015.

<sup>954</sup> Al-Zubaidi, Y. (2012), *Statistikens roll i arbetet mot diskriminering* [The role of statistics in fighting discrimination]. Diskrimineringsombudsmannen: Stockholm. Pp. 71-72. Available at: [www.do.se/om-diskriminering/publikationer/statistikens-roll-arbetet-mot-diskriminering](http://www.do.se/om-diskriminering/publikationer/statistikens-roll-arbetet-mot-diskriminering). English summary at: [www.equineteurope.org/The-role-of-statistics-in-fighting](http://www.equineteurope.org/The-role-of-statistics-in-fighting).



addition, Section 20 allows the government or the authority appointed by the government to issue regulations concerning further exemptions from the prohibition in Section 13 if necessary due to an important public interest. Thus, the Act seems to indicate that exemptions in relation to 'substantial public interest' are subject to current political priorities.

On the other hand, Section 2 of the Act reads: 'If another statute or other enactment contains provisions that deviate from this Act, those provisions shall apply'. According to the Data Protection Authority, it seems that there is no coherent information on all pieces of legislation that outweigh the Personal Data Act in this respect.<sup>955</sup> Legislation that governs the production of the Official Statistics of Sweden is one such example.

The Official Statistics Act (OSA) and the Official Statistics Ordinance (OSO) regulate the production of the Official Statistics of Sweden.<sup>956</sup> The Official Statistics Act (OSA) lays down a framework for the production of national statistics by the public authorities. The Act specifies a number of general principles that should be followed when producing such statistics. According to the Act, the government decides which public authorities have the task of producing the Official Statistics of Sweden, specified in the Official Statistics Ordinance (OSO). Thus, the Official Statistics of Sweden comprise a number of statistical products ordered by the government. Any other statistical products produced by the public sector which are not regulated by the Act and the Ordinance are not a part of the Official Statistics of Sweden and do not have the relevant logo that can be found at the end of the Act.

According to Section 15 of the OSA, processing sensitive personal data, as defined in Section 13 of the PDA, is prohibited unless it is allowed in accordance with a regulation issued by the government. Furthermore, Section 1 of the OSA provides that the prohibition in Section 15 applies to all data collection by the authorities responsible for the Official Statistics of Sweden, thus even covering statistical products (by these authorities) that are not a part of the Official Statistics of Sweden.

The annex to the OSO specifies a number of statistical areas which are part of the Official Statistics of Sweden as well as the national authorities which are responsible for these statistical areas. According to Section 8 of the OSO, sensitive personal data may be processed in these statistical areas only if mentioned in the annex to the OSO. The annex mentions data on health for a number of statistical areas and data on membership of religious associations for one statistical area.<sup>957</sup>

| Consent | Employment | Health/life | Public | Members | Legal claim | Medicine | Public interest – Other |
|---------|------------|-------------|--------|---------|-------------|----------|-------------------------|
| X       | X          | X           | X      | X       | X           | X        | X                       |

<sup>955</sup> Data Protection Authority (Datainspektionen), response 22 December 2015.

<sup>956</sup> Sweden, Official Statistics Act (2001:99) (*Lag (2001:99) om den officiella statistiken*). Adopted on 15 March 2001, latest amendment from 31 December 2013 by (2013:945). Full text: [www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Lag-200199-om-den-officiell-sfs-2001-99/?bet=2001:99](http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Lag-200199-om-den-officiell-sfs-2001-99/?bet=2001:99); Official Statistics Ordinance (2001:100) (*Förordning (2001:100) om den officiella statistiken*). Adopted on 15 March 2001, latest amendment from 31 December by 013 (2013:946). Full text: [www.notisum.se/rnp/sls/lag/20010100.htm](http://www.notisum.se/rnp/sls/lag/20010100.htm).

<sup>957</sup> According to the annex to the Official Statistics Ordinance: data on health are collected for the statistical areas 'Labour market', 'Healthcare', 'Living conditions', 'Social insurance', 'Social services', 'Transport and communications', and data on payments related to illness and on membership of religious associations are collected for the statistical area 'Household economy'.

## 2. Definitions and categories used to collect equality data

It seems that there is no national legislation that imposes a duty to collect equality data in relation to various discrimination grounds.

The OSO provides for a number of statistical areas where data on health (which might be relevant for disability) may be processed and one statistical area where data on membership of a religious community may be processed. The law does not provide for any definitions or categories. In fact, according to Section 2 of the OSO, it is up to the relevant authorities which are mentioned in the annex to decide on the content and scope of the statistics produced.

As a result, sensitive personal data are not necessarily collected just because the law allows it. Furthermore, definitions and categories may differ from one data collection practice to another and may change over time as well. Finally, only statistical products that are listed in the OSO form part of the Official Statistics of Sweden. Any other statistical products generated by the public authorities which are not mentioned in the OSO seem to be produced on an ad hoc basis, often on the basis of a special governmental task, and definitions and categories may therefore differ from those used within the Official Statistics of Sweden.

According to a report on equality data issued by the Equality Ombudsman, there is a need for a national mapping study to find out what kind of equality data are collected, where, by whom and according to which methodologies and categories.<sup>958</sup> In the absence of such a study it is difficult to identify all data collection practices carried out by the national authorities.

It is therefore difficult to assert with a high level of certainty which definitions and categories are actually used by the national authorities. Below is an estimation of a general trend, based on the most well-known national practices which have been identified.

Generally, it seems that data on age are elicited from personal identity numbers (*personnummer*) or by self-identification in surveys. Data on the other discrimination grounds are collected through self-identification, with the exception of data on ethnic origin, which are collected by using the proxy of country of birth.

Racial or ethnic origin data are collected through the proxy of country of birth, sometimes in combination with parents' country of birth. In the latter case a distinction is made between the categories 'Swedish origin' and 'foreign origin' as defined by Statistics Sweden, the national statistical authority. People of Swedish origin are defined as people born in Sweden whose parents were both born in Sweden or people born in Sweden who have one parent who was born in Sweden and one parent born outside Sweden. People of foreign origin are people born outside Sweden or people born in Sweden whose parents were both born outside Sweden.<sup>959</sup>

Sexual orientation data are collected in one instance through voluntary self-identification, using the categories "homosexual", "heterosexual", "bisexual", "do not know", "other" (Public Health Survey). Data on health which are relevant to disability are collected through voluntary self-identification in surveys, however, different authorities and different surveys seem to use different questions/categories (special edition of the Labour Force Survey and the Survey on Living Conditions). There is one instance of data collection on religion collected through voluntary self-identification using the categories:

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<sup>958</sup> Al-Zubaidi, Y. (2012), *Statistikens roll i arbetet mot diskriminering* [The role of statistics in fighting discrimination]. Diskrimineringsombudsmannen: Stockholm.

<sup>959</sup> *Statistics on persons with foreign background: guidelines and recommendations*. Reports on Statistical Co-ordination for the Official Statistics of Sweden 2002:3.

“Christianity”, “Islam”, “Judaism”, “Hinduism”, “Buddhism”, “other” and “no religion”. The question is related to the person as well as the person’s parents (Swedish Level of Living Survey).

### 3. Practical implementation

No census has been carried in Sweden since 1990. The main data sources are administrative registers and data from surveys. Data are available in an aggregated form. Micro-data do not seem to be available, unless access is given to research institutions subject to ethical scrutiny.<sup>960</sup> Normally, access to any collected data is subject to the limitations imposed by the Public Access to Information and Secrecy Act (2009:400).<sup>961</sup>

The Official Statistics of Sweden are produced for the purpose of meeting the needs of ‘general information, investigations and research’.<sup>962</sup> Two examples of the most well-known data collection practices that are part of the Official Statistics of Sweden are listed below.

The Labour Force Survey (LFS) (*Arbetskraftsundersökningarna*) is a survey produced by Statistics Sweden on a monthly basis and presented in reports for every month, quarter and year. Data are collected through telephone interviews. The survey includes data on age and on country of birth. The survey has been EU-harmonised by force of EC Regulation No. 577/98 since 2001 and by force of EC Regulation No. 430/2005 since 2005. Data are delivered to Eurostat on a quarterly basis.<sup>963</sup>

The Survey on Living Conditions (*Undersökningarna av levnadsförhållanden*) is a survey produced by Statistics Sweden on a yearly basis. Data are collected through telephone interviews. The survey includes data on age, the categories Swedish background/foreign background and data on health which in part may be relevant to disability. Since 2008 the survey has been harmonised with the European Statistics on Income and Living Conditions (EU-SILC), according to EC regulation No. 1177/2003. Data are delivered to Eurostat twice a year.<sup>964</sup>

Examples of data collection practices which are not a part of the Official Statistics of Sweden can be found below.

The Situation of Persons with Disabilities on the Labour Market (*Situationen på arbetsmarknaden för personer med funktionsnedsättning*) is a sample survey produced by Statistics Sweden. The survey has been produced on a yearly basis during the period 1996-2008 with some exceptions, as well as for 2013 and 2014. The survey is conducted as an extra module based on the LFS. A question on disability is asked during the data collection for the LFS, thereafter interviews are conducted with those people who declare themselves as having a disability. The survey also highlights the extent to which people with disabilities have been exposed to different types of discrimination or differential treatment in the workplace. The survey includes data on age.<sup>965</sup>

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<sup>960</sup> Act (2003:460) concerning the Ethical Review of Research Involving Humans (*Lag (2003:460) om etikprövning av forskning som avser människor*).

<sup>961</sup> Further information from the Ministry of Justice: [www.regeringen.se/contentassets/2c767a1ae4e8469fbfd0fc044998ab78/public-access-to-information-and-secrecy-act](http://www.regeringen.se/contentassets/2c767a1ae4e8469fbfd0fc044998ab78/public-access-to-information-and-secrecy-act).

<sup>962</sup> The Official Statistics Act (2001:99), Section 3.

<sup>963</sup> [www.scb.se/am0401/](http://www.scb.se/am0401/).

<sup>964</sup> [www.scb.se/sv/Hitta-statistik/Statistik-efter-amne/Levnadsforhallanden/Levnadsforhallanden/Undersokningarna-av-levnadsforhallanden-ULFSILC/](http://www.scb.se/sv/Hitta-statistik/Statistik-efter-amne/Levnadsforhallanden/Levnadsforhallanden/Undersokningarna-av-levnadsforhallanden-ULFSILC/).

<sup>965</sup> [www.scb.se/sv/Hitta-statistik/Statistik-efter-amne/Arbetsmarknad/Funktionsnedsatta/Situationen-pa-arbetsmarknaden-for-personer-med-funktionsnedsattning/](http://www.scb.se/sv/Hitta-statistik/Statistik-efter-amne/Arbetsmarknad/Funktionsnedsatta/Situationen-pa-arbetsmarknaden-for-personer-med-funktionsnedsattning/).

The Public Health Survey (*Folkhälsoenkäten*) is a sample survey published by the Public Health Agency of Sweden, with the data being collected by Statistics Sweden. The survey has been produced on a yearly basis since 2005 and data are collected through a questionnaire. The survey includes data on sexual orientation collected through voluntary self-identification.<sup>966</sup>

The Swedish Level of Living Survey (*Levnadsnivåundersökningen*) is produced by the Swedish Institute for Social Research at Stockholm University. It has been conducted in 1968, 1974, 1981, 1991, 2000 and 2010. The questionnaire for the study includes data on country of birth (of the data subject and his/her parents), language(s) spoken at home, religious affiliation of parents and disability.<sup>967</sup>

In addition, the Department of Sociology at Umeå University conducts the Swedish part of the European Social Survey (ESS). Data have been produced every second year since 2002. The questionnaire includes questions on belonging to an "ethnic minority" as well as religious affiliation and disability. It also includes questions on attitudes towards ethnic minorities, same-sex partnerships and religious communities, as well as questions about experiences of discrimination due to factors such as colour of skin, nationality, religion, language, ethnic origin, age, sexual orientation and disability.<sup>968</sup>

Despite some methodological issues, the study on the health situation of the five recognised national minorities conducted by the Public Health Agency of Sweden is an interesting exception when it comes to involving NGOs in data collection by a national authority.<sup>969</sup>

As far as complaints are concerned, the Equality Ombudsman provides data on complaints as well as data on settlements and court decisions broken down by discrimination ground (e.g. age, ethnic origin or disability), but without specifying any further categories. Data on court decisions concern only cases litigated by the Ombudsman.

#### 4. Key issues

In 2011, the government commissioned a study on equality data with a focus on the Survey on Living Conditions. The task of conducting the study was given to the Equality Ombudsman, the national equality body. The study was carried out following the recommendations of the *European handbook on equality data*. Presented in 2012, the final report outlined possible scenarios of how equality data on living conditions could be produced in relation to the grounds of ethnic origin, religion or other belief, disability, sexual orientation, transgender identity or expression, as well as the five officially recognised national minorities. Among other things, the study identified the lack of national coordination as a first challenge for the further development of equality data collection. A national mapping study was recommended.<sup>970</sup> In its final observations, the CERD committee recommended Sweden to seek guidance from the study by the Equality Ombudsman in order to develop equality data.<sup>971</sup>

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<sup>966</sup> [www.folkhalsomyndigheten.se/amnesomraden/statistik-och-undersokningar/enkater-och-undersokningar/nationella-folkhalsoenkaten/](http://www.folkhalsomyndigheten.se/amnesomraden/statistik-och-undersokningar/enkater-och-undersokningar/nationella-folkhalsoenkaten/).

<sup>967</sup> [www.sofi.su.se/forskning/tre-forskningsavdelningar/lnu](http://www.sofi.su.se/forskning/tre-forskningsavdelningar/lnu).

<sup>968</sup> [www.soc.umu.se/english/research/show-research-projects/?code=348&currentView=description](http://www.soc.umu.se/english/research/show-research-projects/?code=348&currentView=description).

<sup>969</sup> The recognised national minorities are: Jews, Roma, Sami, the Swedish Finns and Tornedalers.

<sup>970</sup> Al-Zubaidi, Y. (2012), *Statistikens roll i arbetet mot diskriminering* [The role of statistics in fighting discrimination]. Diskrimineringsombudsmannen: Stockholm.

<sup>971</sup>

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsixMIkoQ%2fPgjLc5fcWxoQ212mG2rBEYbL1ZXXc%2bjpb2vrwQmZn9DKrJ9jsVvDBmT7kkyNyYzX7HFH%2fDXncl9vQluNH%2fvq2mswSDnqaiV4P73YWoRb80y8nVbXTULMtkVDw%3d%3d>.

At the same time there seems to be little interest in coordinating and developing equality data at the national level, in spite of several recommendations by a number of UN Treaty Bodies and a growing demand from civil society organisations. Given the available international reports, and the report by the Equality Ombudsman, it is difficult to explain the lack of interest from policymakers.

Equality data often seem to be collected on an ad hoc basis. Lack of uniformity in definitions and categories risks rendering available data incomparable, especially concerning disability. Given demographic changes, combining data on country of birth with data on country of birth of the parents (presumably as a proxy for ethnic origin), as is occasionally done, for instance, in the Survey on Living Conditions, does not seem to reflect reality in a meaningful way. Several data collection practices can be seen as good practice in the narrow sense of the word. However, the Public Health Survey seems to provide best practice more broadly, as data on sexual orientation have been collected for 10 years consistently using the definition and categories provided by the Discrimination Act.

Finally, ethnic profiling should be mentioned. A regional police authority has been accused of developing a register based on sensitive personal data on ethnic origin concerning Roma. This was done without their consent. The register resembles ethnic profiling in many ways. Several authorities have been investigating the case and the police authority has been the subject of criticism. The Chancellor of Justice (*Justitiekanslern*) concluded that the personal integrity of the individuals registered had not been respected by the police authority and awarded damages of 5,000 SEK for every person who was listed in the register. However, none of the investigating authorities seem to have problematised the register in terms of ethnic discrimination or ethnic profiling in a credible manner. The organisation Civil Rights Defenders has now taken this case to court, hoping to clarify the above issues (case pending).<sup>972</sup> Confusing ethnic equality data with ethnic profiling is not news. Public authorities could clarify the difference or risk contributing to further confusion.

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<sup>972</sup> [www.civilrightsdefenders.org/sv/news/we-sue-the-swedish-state-for-the-police-register-of-roma/](http://www.civilrightsdefenders.org/sv/news/we-sue-the-swedish-state-for-the-police-register-of-roma/).

## 28. United Kingdom

**Expert: Omar Khan**

### 1. Relevant legal framework

In the United Kingdom data on equality grounds have been collected for many years. The 2010 Equality Act not only prohibits discrimination on grounds of gender, race, disability, religion or belief, sexual orientation, age and sex, but requires public bodies to promote equal opportunities on these grounds. This has been interpreted to require data collection to demonstrate that public bodies are meeting the requirements of the Equality Act. As early as the 1960s the government used social scientific surveys to determine whether people were being discriminated against under the 1965 Race Relations Act, with the Equal Opportunities Commission (1975-2007) and Commission for Racial Equality (1976-2007) pioneering the use of data to inform their work.

The 2010 Equality Act does not extend to Northern Ireland, where section 75 of the 1998 Northern Ireland Act outlines a similar but slightly different list of “protected characteristics”. The NI Act does not explicitly include the ‘Public Sector Equality Duty’ (section 149 of the Equality Act).<sup>973</sup> However, as with the rest of the UK, the law is usually interpreted to require data monitoring of ethnicity (and other groups). As 2003 official guidance from the Office for National Statistics (ONS) explained: ‘The general duty does not say explicitly that you must monitor policy and service delivery. However, you will find it difficult to show that you have met your duty (to eliminate unlawful racial discrimination, and promote equality of opportunity and good race relations) if you do not have any monitoring data’.<sup>974</sup>

The other major legislation affecting equality data collection is the 1998 Data Protection Act.<sup>975</sup> This extends to all parts of the UK (including Northern Ireland) and conforms to the 1995 European Data Protection Directive 95/46/EC.<sup>976</sup> The Act specifies principles<sup>977</sup> for the collection of personal data and the circumstances under which data can be safely and fairly used. Other relevant legislation includes the Human Rights Act 1998 and the Freedom of Information Act 2000.<sup>978</sup>

The Data Protection Act 1998 stipulates how sensitive data should be collected, including the examples listed in Article 8.1 of the Data Protection Directive 95/46/EC. In addition to the exemptions mentioned in Articles 8.2-8.4, the UK Data Protection Act 1998

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<sup>973</sup> The duty applies to Scotland and Wales as well as England. Section 149 of the Equality Act 2010, with links to the full Act: [www.legislation.gov.uk/ukpga/2010/15/section/149](http://www.legislation.gov.uk/ukpga/2010/15/section/149). Among other differences, the Northern Ireland Act includes “political opinion” and “persons with dependants and persons without” as requiring due regard to promote equality of opportunity. Other relevant legislation includes the Race Relations (Northern Ireland) Order 1997, the Fair Employment and Treatment (Northern Ireland) Order 1998 and the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003.

<sup>974</sup> ONS (2003) *Ethnic group statistics. A guide for the collection and classification of ethnicity data*. Crown Copyright, p. 17. [www.ons.gov.uk/ons/guide-method/measuring-equality/equality/measuring-equality--a-guide/ethnic-group-statistics--a-guide-for-the-collection-and-classification-of-ethnicity-data.pdf](http://www.ons.gov.uk/ons/guide-method/measuring-equality/equality/measuring-equality--a-guide/ethnic-group-statistics--a-guide-for-the-collection-and-classification-of-ethnicity-data.pdf). A more recent document is ONS (2011) *Measuring equality: A guide for the collection and classification of ethnic group, national identity and religion data in the UK*. Crown Copyright.

<sup>975</sup> United Kingdom, Data Protection Act 1998: [www.legislation.gov.uk/UKPGA/1998/29/contents](http://www.legislation.gov.uk/UKPGA/1998/29/contents).

<sup>976</sup> The European Data Protection Directive is available online: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31995L0046>.

<sup>977</sup> These eight principles are that personal data should: 1. Be obtained and processed fairly and lawfully and should not be processed unless certain conditions are met; 2. Be obtained for a specified and lawful purpose and should not be processed in any manner incompatible with that purpose; 3. Be adequate, relevant and not excessive for those purposes; 4. Be accurate and kept up-to-date; 5. Not be kept for longer than is necessary; 6. Be processed in accordance with the data subject’s rights; 7. Be kept safe from unauthorised access, accidental loss or destruction, and; 8. Not transferred to a country outside the European Economic Area (EEA), unless that country has adequate levels of protection for personal data.

<sup>978</sup> United Kingdom, Human Rights Act 1998: [www.legislation.gov.uk/ukpga/1998/42/contents](http://www.legislation.gov.uk/ukpga/1998/42/contents); United Kingdom, Freedom of Information Act 2000: [www.legislation.gov.uk/ukpga/2000/36/contents](http://www.legislation.gov.uk/ukpga/2000/36/contents).



includes an exemption when the processing is necessary for administering justice or for exercising statutory or governmental functions. A number of other conditions and prohibitions for processing sensitive personal data are set out in the Act.<sup>979</sup> Their effect is to permit the processing of sensitive personal data for a range of other purposes, typically those that are substantially in the public interest and which must necessarily be carried out without the explicit consent of the individual.

Section 33 of the Act further allows certain exemptions for research purposes. Data subjects must also further give their express consent and researchers must otherwise follow the requirements of the Act, especially to ensure individuals cannot be identified and where the research may be of a sort not envisaged by the subject.

The Act explicitly permits the collection and processing of sensitive data<sup>980</sup> in connection with equal opportunities policy, including all those included in this research. For example, under the specific duties regulations, all public bodies are required to publish relevant, proportionate information demonstrating their compliance with the Equality Duty, duties that vary between England, Scotland and Wales. While it is up to each public body to decide for itself what information it publishes to show its compliance, it must include: information relating to employees who share protected characteristics, and information relating to people who are affected by the public body's policies and practices who share protected characteristics.

The UK government has cited the introduction of an optional question on disability in the school census as an example of a wider trend of government departments keeping data on disability, as well as the Office for Disability Issues Life Opportunities Survey and the ONS Opinions Survey.<sup>981</sup> Other important surveys that collect data on disability include the Family Resources Survey (FRS), the Labour Force Survey (see below), the English Longitudinal Survey on Ageing (ELSA) and the British Social Attitudes (BSA) survey.<sup>982</sup>

The Equality and Human Rights Commission has responsibility for ensuring compliance with equality duties. It has a number of powers to secure compliance, including assessments, compliance notices, judicial review, interventions and agreements. If during the course of an assessment, inquiry or investigation the Commission finds that a person or organisation has acted in breach of the Equality Act 2010 it may issue an unlawful act notice. The notice will set out what the unlawful act was and may require

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<sup>979</sup> Any individual who makes a written request and pays a fee is entitled to be: told whether any personal data is being processed; given a description of the personal data, the reasons it is being processed, and whether it will be given to any other organisations or people; given a copy of the information comprising the data; and given details of the source of the data (where this is available). Personal data held for the following purposes will generally be exempt from the right of subject access and should not therefore be disclosed in response to an enquiry from a data subject: national security; crime and taxation; health, education and social work (this exemption is subject to orders being made by the Home Secretary); regulatory activity concerning the protection of members of the public, charities or fair competition in business; 'special purposes', namely: the purposes of journalism; artistic purposes; literary purposes; research, history and statistics; information made available to the public under any enactment; confidential references given by the data controller; judicial appointments and honours; Crown employment and Crown or ministerial appointments.

<sup>980</sup> 'Sensitive personal data (or special categories of data) means personal data consisting of information as to (a) the racial or ethnic origin of the data subject, (b) his political opinions, (c) his religious beliefs or other beliefs of a similar nature, (d) whether he is a member of a trade union (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992), (e) his physical or mental health or condition, (f) his sexual life, (g) the commission or alleged commission by him of any offence, or (h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.' Section 2 of the Data Protection Act 1998.

<sup>981</sup> Office for Disability Issues (2011) *UK initial report: On the UN Convention on the Rights of Persons with Disabilities*. Crown Copyright, p. 101.  
[www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/345120/uk-initial-report.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/345120/uk-initial-report.pdf).

<sup>982</sup> The FRS is collected by the UK's Department for Work and Pensions: [www.gov.uk/government/collections/family-resources-survey--2](http://www.gov.uk/government/collections/family-resources-survey--2); for the LFS, see below; for ELSA, see: [www.elsa-project.ac.uk/](http://www.elsa-project.ac.uk/); and for the BSA, see: [www.natcen.ac.uk/our-research/research/british-social-attitudes/](http://www.natcen.ac.uk/our-research/research/british-social-attitudes/).



the preparation of an action plan to avoid it being repeated or continued. Agreements can be entered into even where there has been no formal investigation. The Commission can also serve a compliance notice if it thinks that a public authority has not complied with a public sector duty.

| Consent | Employment | Health/life | Public | Members | Legal claim | Medicine | Public interest – Other |
|---------|------------|-------------|--------|---------|-------------|----------|-------------------------|
| X       | X          | X           | X      | X       | X           | X        | X                       |

## 2. Definitions and categories used to collect equality data

Official statistical datasets<sup>983</sup> are usually broken down by variables such as age, disability and ethnic origin, though not often on the basis of sexual orientation or gender identity. All of these are self-identification measures; responses should be answered by the respondent directly, particularly if the respondent is an adult. However, questions do usually include particular categories that shape individual responses. For example, there are 18 standard ethnicity categories based on the 2011 Census, with some scope for “write-in” options.<sup>984</sup>

UK guidance focuses on sexual identity rather than sexual orientation. The ONS has only fully tested the sexual identity question for face-to-face and telephone surveys but provides guidance on questions for self-completion forms to be asked of people aged 16 or over.<sup>985</sup> A report published in 2010 gathered data on civil partnerships conducted in the first five years following the passage of civil partnership legislation in 2004.<sup>986</sup>

As with data on sexual orientation, data on gender identity are not generally collected. Estimates suggest as many as 650,000 people are ‘likely to be gender incongruent to some degree’ and this may be viewed as a maximalist definition. Since the Gender Reassignment Act came into force, the government has issued ‘gender reassignment certificates’ (GRCs). As of June 2015, 4,361 applications had been received; 3,999 full GRCs had been issued; 183 interim GRCs had been issued (67% of which have been converted to full GRCs); 193 applications had been declined; and 110 applications had been received which were still pending.<sup>987</sup> However, it is worth noting that many trans or

<sup>983</sup> The ONS Data Collection Methodology team, ONS Survey Control Unit and the National Statistics Harmonisation Group coordinate the quality of data collection methodology.

<sup>984</sup> The 2011 Census uses 18 categories that are also typically used by other organisations, including government institutions but also the private sector and civil society. These categories are grouped into five headings: White: 1. English / Welsh / Scottish / Northern Irish / British; 2. Irish; 3. Gypsy or Irish Traveller; 4. Any other White background, please describe; Mixed / Multiple ethnic groups: 5. White and Black Caribbean; 6. White and Black African; 7. White and Asian; 8. Any other Mixed / Multiple ethnic background, please describe; Asian / Asian British: 9. Indian; 10. Pakistani; 11. Bangladeshi; 12. Chinese; 13. Any other Asian background, please describe; Black / African / Caribbean / Black British: 14. African; 15. Caribbean; 16. Any other Black / African / Caribbean background, please describe; Other ethnic group: 17. Arab; 18. Any other group.

<sup>985</sup> The preferred question is: ‘Which of the following options best describes how you think of yourself?: 1. Heterosexual or Straight, 2. Gay or Lesbian, 3. Bisexual, 4. Other, 5. Prefer not to say’. See also Stonewall (2012) *Using monitoring data. Making the most of sexual orientation data collection*. London: Stonewall. [www.stonewall.org.uk/sites/default/files/using\\_monitoring\\_data.pdf](http://www.stonewall.org.uk/sites/default/files/using_monitoring_data.pdf).

<sup>986</sup> ONS (2013) ‘Trends in civil partnerships: how will marriages to same sex couples change statistics?’ [www.ons.gov.uk/ons/rel/vsob2/civil-partnership-statistics--united-kingdom/2012/sty-trends-in-civil-partnerships.html](http://www.ons.gov.uk/ons/rel/vsob2/civil-partnership-statistics--united-kingdom/2012/sty-trends-in-civil-partnerships.html).

<sup>987</sup> Women and Equalities Committee (2015) *Transgender equality. First Report of Session 2015-16*. London: The Stationery Office Limited, p. 11. [www.publications.parliament.uk/pa/cm201516/cmselect/cmwomeq/390/390.pdf](http://www.publications.parliament.uk/pa/cm201516/cmselect/cmwomeq/390/390.pdf).

intersex people in the UK feel unable or perhaps choose not to identify only in one way, especially given widespread experiences of discrimination in the workplace and even in public places. This affects not only the nature of the question and wider data collection issues, but also any interpretation of the resulting data.

NHS England suggests there is 'no standard approach to asking questions or collecting data on gender reassignment' but presents one possible question recommended by GIRE, an NGO: 'Have you gone through any part of a process, or do you intend to (including thoughts or actions) to bring your physical sex appearance, and/or your gender role, more in line with your gender identity? (This could include changing your name, your appearance and the way you dress, taking hormones or having gender confirming surgery): •Yes; •No; •Prefer not to say'.<sup>988</sup>

### 3. Practical implementation

The best and most long-established (first collected in 1801) dataset in the UK is the Census. This is a headcount of every household in the country, collected every ten years (most recently in 2011) and includes data on ethnicity, age, religion and other socio-demographic characteristics. The next (2021) Census will be predominantly online, supplemented by survey and administrative data. Census data are publicly available and while the ONS generates a significant number of outputs, academic and other researchers often analyse the data in further detail.<sup>989</sup>

The ONS is responsible for collecting and publishing statistics related to the economy, population and society at national, regional and local levels. Notably, the ONS collects data for the Labour Force Survey, a quarterly survey with data on ethnicity, age and disability, with households randomly selected according to postcode data. As explained on the UK Data Service website, '[t]he *Labour Force Survey Annual Eurostat Datasets* form the UK component of the *European Union Labour Force Survey* (EU LFS), and consist of a subset of core variables from the UK QLFS (held at the UK Data Archive under GN 33246), alongside primary and secondary derived variables computed by Eurostat from the core variables supplied'.<sup>990</sup> The UK's LFS collects data on ethnicity, but the EU LFS only collects data on place of birth and nationality.

From 2005 the EU-SILC was initially conducted via the General Household Survey, but since April 2011 the EU-SILC data have been collected from the Family Resources Survey (FRS). According to the UK data service website '[t]his has the benefit of ensuring that EU and national poverty estimates for the UK are based on the same source. The format of the FRS however will not be affected by the change; instead the EU-SILC should be viewed as a separate follow up survey'.<sup>991</sup> The FRS collects data on ethnicity, but the EU-SILC – which focuses on income, poverty, social exclusion and other living conditions – does not. Finally, the European Social Survey is based at City University's Centre for Comparative Social Studies,<sup>992</sup> which was a founding member of the survey. Although the survey does not have data on the ethnicity or sexual orientation of survey participants, it does ask questions such as 'Will immigrants make

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<sup>988</sup> See NHS England (2015) *Monitoring equality and health inequalities: A position paper*, p. 21. The Press for Change website strongly advises against grouping transgender with gender or sexual orientation questions. As most transsexual people do not consider themselves to be a third sex and being trans has nothing to do with whom you are attracted to. They therefore advise treating trans as a separate entity and using one of the following approaches specifying that completion of the question is optional: Is your gender identity the same as the gender you were assigned at birth? Yes/ No; Do you live and work full time in the gender role opposite to that assigned at birth? Yes/ No.

<sup>989</sup> There are also national centres that focus on particular areas, for example the Centre on the Dynamics of Ethnicity at the University of Manchester, which produces Census Briefings (four pages long): [www.ethnicity.ac.uk/research/outputs/briefings/dynamics-of-diversity/](http://www.ethnicity.ac.uk/research/outputs/briefings/dynamics-of-diversity/).

<sup>990</sup> See UK Data Service website: <https://discover.ukdataservice.ac.uk/catalogue/?sn=6204>.

<sup>991</sup> See UK Data Service website: <https://discover.ukdataservice.ac.uk/series/?sn=200015#variables>.

<sup>992</sup> [www.city.ac.uk/arts-social-sciences/sociology/centre-for-comparative-social-surveys#unit=ccss-publications](http://www.city.ac.uk/arts-social-sciences/sociology/centre-for-comparative-social-surveys#unit=ccss-publications).

countries better or worse place to live?', 'Is cultural life undermined or enriched?' and 'Should gay people be free to live their lives as they wish?'.<sup>993</sup>

Government departments often release data by ethnicity and disability, where relevant, for example the educational attainment of different ethnic groups by the Department for Education, or the ethnic background of prisoners by the Ministry of Justice. Local authorities also generally publish summarised data about ethnic groups based on the Census and also produce some administrative data (with the Greater London Authority being perhaps the most extensive).

Academics co-ordinate the large national surveys undertaken in the UK. A good example is the Household Longitudinal Study,<sup>994</sup> the largest household panel survey in the world, with 40,000 households and 100,000 individuals, including an immigrant and ethnic "boost" sample of around 6,000 individuals. It began in 2009 but builds on the British Household Panel Study (BHPS) with 18 waves between 1991 and 2008.<sup>995</sup>

For national surveys held in the UK Data Archive,<sup>996</sup> researchers must apply for and explain their use of the data. For administrative data it is usually possible to secure anonymised data where people are not identified by making a "freedom of information" (FOI) request, though some datasets (e.g. taxation data) are tightly restricted. The Archive allows researchers to understand the set of questions available in a given survey and to tailor their research questions and methodology accordingly. Many have focused on "equality" issues, with one example relating to the important Millennium Cohort Study.<sup>997</sup> This study has followed 19,000 children born in 2000 at various age intervals and has been designed and managed by academics. Among various key outputs are a working paper on disability among children.<sup>998</sup>

Data are sometimes also produced on where the effects of a policy or legislation may have a disparate impact on a particular group in order to fulfil the public sector equality duty, for example the Department for Work and Pensions on the "benefit cap". These data are sometimes used to inform policy and to monitor policy outcomes. For example, the rising performance of ethnic minority pupils in schools has generated a debate about the reasons for that improvement. The government also commissions data, most notably in this context a report to determine if ethnic minorities experience racial discrimination in the labour market.<sup>999</sup> The methodology involved sending otherwise equivalent CVs, but with different surnames, for various job applications. The results were that people with Asian or African-sounding surnames had to send in nearly twice as many CVs just to get interviewed.

One challenge for equality data collection is *accessing and understanding* those data, particularly for non-specialists. There is a limit to how simply data can be supplied, but

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<sup>993</sup> For an interesting comparative analysis of these questions, see Calzada, I. Gomez-Garrido, M., Moreno, L. and Moreno-Fuentes, F. J. (2014) 'It is not only about equality. A study on the (other) values that ground attitudes to the welfare state'. In *International journal of public opinion research* 26 (2): 178-201. <http://ijpor.oxfordjournals.org/content/26/2/178.full.pdf+html>.

<sup>994</sup> This study is also called 'Understanding Society': [www.understandingsociety.ac.uk/about](http://www.understandingsociety.ac.uk/about).

<sup>995</sup> Another survey with a boost that assesses political behaviour and wider attitudes is the Ethnic Minority British Election Study (EMBES), with its methodology and findings summarised here: [www.runnymedetrust.org/uploads/EMBES%20Intro.pdf](http://www.runnymedetrust.org/uploads/EMBES%20Intro.pdf).

<sup>996</sup> UK Data Archive website: [www.data-archive.ac.uk/](http://www.data-archive.ac.uk/).

<sup>997</sup> Further information on Millennium Cohort Study: [www.cls.ioe.ac.uk/page.aspx?sitesectionid=851&sitesectiontitle=Welcome+to+the+Millennium+Cohort+Study](http://www.cls.ioe.ac.uk/page.aspx?sitesectionid=851&sitesectiontitle=Welcome+to+the+Millennium+Cohort+Study).

<sup>998</sup> Parsons, S. and Platt, L. (2013) *Disability among young children: Prevalence, heterogeneity and socio-economic disadvantage*. CLS Working Paper 2013/11: [www.cls.ioe.ac.uk/shared/get-file.ashx?id=1763&itemtype=document](http://www.cls.ioe.ac.uk/shared/get-file.ashx?id=1763&itemtype=document).

<sup>999</sup> Wood, M, et al (2009) *A test for racial discrimination in recruitment practice in British cities*. Department for Work and Pensions Research Report No 607. London: DWP. [www.natcen.ac.uk/media/20541/test-for-racial-discrimination.pdf](http://www.natcen.ac.uk/media/20541/test-for-racial-discrimination.pdf).

the ONS-supported website NOMISWEB<sup>1000</sup> allows individuals to produce relatively simple “queries”, with the tables accessible in web-based format and for download.

In general, NGOs play a role in equality data, but their role is typically focused on interpreting, analysing and publicising those data, especially for their advocacy work. NGOs are not typically directly involved in the collection of such data, though some analyse these data (or commission academics to do so) in ways that the government’s own analysis doesn’t always do. For example, the Runnymede Trust recently used the government’s own data to show that the 2015 Summer Budget would increase racial inequalities.<sup>1001</sup>

Corporate firms in the UK also collect data. Race for Opportunity and Business in the Community have gathered together the evidence on equality in the workplace, and actively promote better data collection.<sup>1002</sup> The Race for Opportunity ‘Benchmarking Analysis’ outlines performance among 114 large private sector organisations across a range of measures.<sup>1003</sup> Awards have stimulated good practice on race<sup>1004</sup> and (by Stonewall) sexual orientation<sup>1005</sup> in institutions throughout the UK and across the public, private and voluntary sectors. Organisations are keen to take part and share these data, and data collection has thereby driven better behaviour, partly through a wider reach of equality value commitments, but also through competition for business, reputation and employee satisfaction.

Finally, polls in the UK, whether on political or wider social attitudes often include numbers broken down by gender, disability and race, as well as social class. This is an important aspect of data collection in the UK context, though some of it is less robust (and more narrowly focused) than government or academic-run surveys.

#### 4. Key issues

Collecting data on equality grounds in the UK is relatively uncontroversial today. There are now many decades of data collection, supported with clear data protection, and it seems likely that data on sexual orientation will soon follow the experience of ethnicity and be collected across public and indeed private sector organisations in order to ensure all citizens are in fact treated as equals.

One issue that remains is ensuring that data “controls” for other characteristics. Where data show an inequality for a particular group, there may be other socio-demographic explanations which explain that inequality. While questions on discrimination have been asked in various surveys, including Understanding Society (selected waves only), the Ethnic Minority British Election Study (2010) and the British Social Attitudes survey (various years), researchers and policymakers still require better data on this issue. Data on attitudes generally is somewhat lacking, whether in terms of attitudes among different groups or towards those groups.

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<sup>1000</sup> NOMISWEB website: [www.nomisweb.co.uk/](http://www.nomisweb.co.uk/).

<sup>1001</sup> [www.runnymedetrust.org/projects-and-publications/employment-3/budget-2015-impact-on-bme-families.html](http://www.runnymedetrust.org/projects-and-publications/employment-3/budget-2015-impact-on-bme-families.html). Other examples include the Child Poverty Action Group and the Joseph Rowntree Foundation (e.g. [www.jrf.org.uk/data/poverty-rate-ethnicity](http://www.jrf.org.uk/data/poverty-rate-ethnicity)), the Equality and Diversity Forum and many others. Another example is Stopwatch, a campaign group working to reduce racial disproportionality in the criminal justice system, which produces relatively simple factsheets which can also be used via social media: [www.stop-watch.org/get-informed/factsheet/stop-and-account](http://www.stop-watch.org/get-informed/factsheet/stop-and-account).

<sup>1002</sup> A summary of their labour market statistics can be found here: [www.bitc.org.uk/issues/employment/key-statistics-and-research](http://www.bitc.org.uk/issues/employment/key-statistics-and-research).

<sup>1003</sup> Business in the Community (n.d.) ‘Benchmarking 2014 Analysis and Top Ten Organisations’. <http://race.bitc.org.uk/Awards-Benchmark/Benchmark2014toptenorganisations>.

<sup>1004</sup> Race for Opportunity 2015 Awards Finalists: <http://race.bitc.org.uk/awards-benchmarking/awards-2015-finalists>

<sup>1005</sup> Stonewall (2015) *Top 100 employers. The definitive guide to the best places to work for lesbian, gay and bisexual staff*. London: Stonewall. [www.stonewall.org.uk/sites/default/files/top100\\_2015.pdf](http://www.stonewall.org.uk/sites/default/files/top100_2015.pdf).

A recent development is worth noting, namely the “open data” agenda. It is not important only to *collect* equality data, but to ensure they are effectively communicated and disseminated. Producing large Excel spreadsheets or data in more sophisticated software makes it difficult for non-specialists to access, much less understand, such data. There are various examples of better “visualisation”, including from the *Guardian* newspaper data blog and the *Financial times*. One example from the government is a visualisation on the variation in different areas of England in terms of how long you can expect to live before your health limits your day-to-day activities.<sup>1006</sup>

The “big data” agenda has sometimes been conflated with open data. This has not directly focused on equality data per se, there is increasing focus on how commercial and “administrative data” can help governments and business understand citizens and customers. One example is credit scoring but another is the various “data linkage” projects including those underpinning government reforms in the provision of welfare (i.e. Universal Credit). Finally, the government has suggested that the 2021 Census and later data will make much more use of administrative data (i.e. data held by the National Health Service, Revenue and Customs or various local authorities), including for the measurement of equality data. While this agenda has some promise, there are also concerns about its use, on both accuracy and ethical grounds.

Comparatively, the UK stands out in collecting ethnicity data which is controversial or even illegal elsewhere in Europe. The categories in the UK combine national, ethnic and geographic headings. On the one hand, this indicates a lack of conceptual consistency. On the other hand, the categories have been chosen to respond to social reality. As ethnic or racial origin is a social construct, data collection exercises will always involve categories that are relevant to a given society. In the UK, the categories reflect our colonial history, but also the groups which are in the largest number in the UK. Other countries in Europe have different groups in the greatest proportion and will also have different groups who experience social disadvantage. In other words, while it is useful from a comparative research point of view to adopt similar categories across different countries, the social constructions of ethnicity, and the disadvantages that attach to those constructions, will vary country by country. A social constructivist point of view still allows for the observation that socially constructed categories have *real outcomes* in the world. And so the categories should seek to correspond to the social disadvantages in any given society. For example, in the United States and India respectively there are differing data collection categories, and these correspond to those groups with the most historically important experiences of inequality and disadvantage (and in the greatest number).

Nevertheless, there are some categories which are likely to be similar across Europe. First are the various ‘Black/Black British’ categories. The shared experience of people of African descent is already recognised, and there are similar forms of prejudice against these people as well as (some) shared experiences.

As this summary shows, the UK experience is that monitoring equality data can and should be done to ensure all citizens are in fact treated equally by their governments. The UK case shows collecting such data conforms with high standards of data protection, and is used by NGOs and academic researchers as well as government to ensure that we can better understand the experience of ethnic minorities and other groups, and ultimately seek to ensure their equal participation in democratic, social and political institutions.

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<sup>1006</sup> [www.neighbourhood.statistics.gov.uk/HTMLDocs/dvc172/index.html](http://www.neighbourhood.statistics.gov.uk/HTMLDocs/dvc172/index.html).

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